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International Court of Justice

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E R R A T A

Closing Address by Robert H. Jackson, 25 July 1946

Page 1,line 24, delete comma. Also, line 24, after "terror" insert "of".

Page 2, line 14, delete "nor" and substitute "not".

Page 3, last line, change "German" to "Germany".

Page 13, line 30, change "patter" to "pattern".

Page 16, line 6, change "not" to "no", also, line 28, change "1933" to "1935".

Page 19, line 19, delete "Ribbentrop" and substitute "Ribbentrop's Ministry".

Page 22, line 17, word after "the" is "established".

Page 23, line 9, change "German" to "Germany".

Page 25, line 7, words after "played" are "a part".

Page 27, line 4, word after "ready" is "instrument"; also, line 16, after "and" insert "who".

Page 29, line 1, words after "to" are "this reunion".

Page 33, line 10, word before "us" is "given".

Page 34, line 3, word after "shown" is "which".

Footnote 3, line 2, change 2394-PS to 2494-PS.

Footnote 47, line 7, change 2340-PS to 2349-PS.

Footnote 64, "Schmitzler" should read "Schnitzler".

Footnote 69, line 2, "page 205" should read "page 285".

Footnote 91, line 5, change "R-123" to "R-133".

Page 2, line 27, change "nineteen" to "eighteen".

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INTERNATIONAL MILITARY TRIBUNAL

CLOSING ADDRESS

By

ROBERT H. JACKSON

Chief of Counsel for The United States

at

THE PALACE OF JUSTICE, NURNBERG, GERMANY

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Mr. President and Members of the Tribunal:

An advocate can be confronted with few more formidable tasks than to select his closing arguments where there is great disparity between his appropriate time and his available material. In eight months -- a short time as state trials go -- we have introduced evidence which embraces as vast and varied a panorama of events as has ever been compressed within the frame work of a litigation. It is impossible in summation to do more than outline with bold strokes the vitals of this trial's mad and melancholy record, which will live as the historical text of the Twentieth Century's shame and depravity.

It is common to think of our own time as standing at the apex of civilization, from which the deficiencies of preceding ages may patronizingly be viewed in the light of what is assumed to be "progress." The reality is that in the long perspective of history the present century will not hold an admirable position, unless its second half is to redeem its first. These two-score years in this Twentieth Century will be recorded in the book of years as one of the most bloody in all annals. Two World Wars have left a legacy of dead which number more than all the armies engaged in any war that made ancient or medieval history. No half-century ever witnessed slaughter on such a scale, such cruelties and inhumanities, such wholesale deportations of peoples into slavery, such annihilations, of minorities. The Terror Torquemada pales before the Nazi Inquisition. These deeds are the overshadowing historical facts by which generations to come will remember this decade. If we cannot eliminate the causes and prevent the repetition of these barbaric events, it is not an irresponsible prophecy to say that this Twentieth Century may yet succeed in bringing the doom of civilization.

Goaded by these facts, we have moved to redress the blight on the record of our era. The defendants complain that our pace

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is too fast. In drawing the Charter of this Tribunal, we thought we were recording an accomplished advance in International Law. But they say that we have outrun our times, that we have anticipated an advance that should be, but has not yet been made. The Agreement of London, whether it originates or merely records, at all events marks a transition in International Law which roughly corresponds to that in the evolution of local law when men ceased to punish local crime by "hue and cry" and began to let reason and inquiry govern punishment. The society of nations has emerged from the primitive "hue and cry," the law of "catch and kill." It seeks to apply sanctions to enforce International Law, but to guide their application by evidence, law, and reason instead of outcry. The defendants denounce the law under which their accounting is asked. Their dislike for the law which condemns them is nor original. It has been remarked before that -

"No thief ere felt the halter draw
With good opinion of the law."

I shall not labor the law of this case. The position of the United States was explained in my opening statement. My distinguished colleague, the Attorney General of Great Britain, will reply on behalf of all the Chief Prosecutors to the defendants' legal attack. At this stage of the proceedings, I shall rest upon the law of these crimes as laid down in the Charter. The defendants, who except for the Charter would have no right to be heard at all, now ask that the legal basis of this trial be nullified. This Tribunal, of course, is given no power to set aside or to modify the Agreement between the Four Powers, to which nineteen other nations have adhered. The terms of the Charter are conclusive upon every party to these proceedings.

In interpreting the Charter, however, we should not overlook the unique and emergent character of this body as an International Military Tribunal. It is no part of the constitutional mechanism of internal justice of any of the signatory nations. Germany has unconditionally surrendered, but no peace treaty has been signed or

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agreed upon. The Allies are still technically in a state of war with Germany, although the enemy's political and military institutions have collapsed. As a Military Tribunal, it is a continuation of the war effort of the Allied nations. As an International Tribunal, it is not bound by the procedural and substantive refinements of our respective judicial or constitutional systems, nor will its rulings introduce precedents into any country's internal system of civil justice. As an International Military Tribunal, it rises above the provincial and transient and seeks guidance not only from International Law but also from the basic principles of jurisprudence which are assumptions of civilization and which long have found embodiment in the codes of all nations.

Of one thing we may be sure. The future will never have to ask, with misgiving, What could the Nazis have said in their favor. History will know that whatever could be said, they were allowed to say. They have been given the kind of a trial which they, in the days of their pomp and power, never gave to any man.

But fairness is not weakness. The extraordinary fairness of these hearings is an attribute of our strength. The prosecution's case, at its close, seemed inherently unassailable because it rested so heavily on German documents of unquestioned authenticity. But it was the weeks upon weeks of pecking at this case by one after another of the defendants that has demonstrated its true strength. The fact is that the testimony of the defendants has removed any doubts of guilt which, because of the extraordinary nature and magnitude of these crimes, may have existed before they spoke. They have helped write their own judgment of condemnation.

But justice in this case has nothing to do with some of the arguments put forth by the defendants or their counsel. We have not previously and we need not now discuss the merits of all their obscure and tortuous philosophy. We are not t rying them for possession of obnoxious ideas. It is their right, if they choose, to renounce the Hebraic heritage in the civilization of which German

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was once a part. Nor is it our affair that they repudiated the Hellenic influence as well. The intellectual bankruptcy and moral perversion of the Nazi regime might have been no concern of International Law had it not been utilized to goosestep the Herrenvolk across international frontiers. It is not their thoughts, it is their overt acts which we charge to be crimes. Their creed and teachings are important only as evidence of motive, purpose, knowledge, and intent.

We charge unlawful aggression but we are not trying the motives, hopes, or frustrations which may have led Germany to resort to aggressive war as an instrument of policy. The law, unlike politics, does not concern itself with the good or evil in the status quo, nor with the merits of grievances against it. It merely requires that the status quo be not attacked by violent means and that policies be not advanced by war. We may admit that overlapping ethnological and cultural groups, economic barriers, and conflicting national ambitions created in the 1930's, as they will continue to create, grave problems for Germany as well as for the other peoples of Europe. We may admit too that the world had failed to provide political or legal remedies which would be honorable and acceptable alternatives to war. We do not underwrite either the ethics or the wisdom of any country, including my own, in the face of these problems. But we do say that it is now, as it was for sometime prior to 1939, illegal and criminal for Germany or any other nation to redress grievances or seek expansion by resort to aggressive war.

Let me emphasize one cardinal point. The United States has no interest which would be advanced by the conviction of any defendant if we have not proved him guilty on at least one of the counts charged against him in the Indictment. Any result that the calm and critical judgment of posterity would pronounce unjust, would not be a victory for any of the countries associated in this prosecution. But in summation we now have before us the tested evidences of criminality and have heard the flimsy excuses and paltry evasions

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of the defendants. The suspended judgment with which we opened this case is no longer appropriate. The time has come for final judgment and if the case I present seems hard and uncompromising, it is because the evidence makes it so.

I perhaps can do no better service than to try to lift this case out of the morass of detail with which the record is full and put before you only the bold outlines of a case that is impressive in its simplicity. True, its thousands of documents and more thousands of pages of testimony deal with an epoch and cover a Continent, and touch almost every branch of human endeavor. They illuminate specialties, such as diplomacy, naval development and warfare, land warfare, the genesis of air warfare, the politics of the Nazi rise to power, the finance and economics of totalitarian war, sociology, penology, mass psychology, and mass pathology. I must leave it to experts to comb the evidence and write volumes on their specialties, while I picture in broad strokes the offenses whose acceptance as lawful would threaten the continuity of civilization. I must, as Kipling put it, "splash at a ten-league canvas with brushes of comet's hair."

THE CRIMES OF THE NAZI REGIME

The strength of the case against these defendants under the conspiracy count, which it is the duty of the United States to argue, is in its simplicity. It involves but three ultimate inquiries: First, have the acts defined by the Charter as crimes been committed; second, were they committed pursuant to a common plan or conspiracy; third, are these defendants among those who are criminally responsible?

The charge requires examination of a criminal policy, not of a multitude of isolated, unplanned, or disputed crimes. The substantive crimes upon which we rely, either as goals of a common plan or as means for its accomplishment, are admitted. The pillars which uphold the conspiracy charge may be found in five groups of overt acts, whose character and magnitude are important considera-

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tions in appraising the proof of conspiracy.

1. The Seizure of Power and Subjugation of Germany to a Police State.

The Nazi Party seized control of the German state in 1933. "Seizure of power" is a characterization used by defendants and defense witnesses, and so apt that it has passed into both history and every-day speech.(1)

The Nazi junta in the early days lived in constant fear of overthrow. Goering, in 1934, pointed out that its enemies were legion and said.

> "Therefore the concentration camps have been created, where we have first confined thousands of Communists and Social Democrat functionaries." (2)

In 1933 Goering forecast the whole program of purposeful cruelty and oppression when he publicly announced:

> "Whoever in the future raises a hand against a representative of the National Socialist movement or of the State, must know that he will lose his life in a very short while."(3)

New political crimes were created to this end. It was made a treason, punishable with death, to organize or support a political party other than the Nazi party.(4) Circulating a false or exaggerated statement, or one which would harm the state or even the Party, was made a crime.(5) Laws were enacted of such ambiguity that they could be used to punish almost any innocent act. It was, for example, made a crime to provoke "any act contrary to the public welfare."(6)

The doctrine of punishment by analogy was introduced to enable conviction for acts which no statute forbade.(7) Minister of Justice Guertner explained that National Socialism considered every violation of the goals of life which the community set up for itself to be a wrong per se, and that the act could be punished even though it was not contrary to existing "formal" law.(8)

The Gestapo and the SD were instrumentalities of an espionage system which penetrated public and private life.(9) Goering controlled a personal wire-tapping unit.(10) All privacy of communica-

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tion was abolished.(11) Party blockleiters, appointed over every 50 households, continuously spied on all within their ken.(12) Upon the strength of this spying individuals were dragged off to "protective custody" and to concentration camps, without legal proceedings of any kind,(13) and without statement of any reason therefor.(14) The partisan political police were exempted from effective legal responsibility for their acts.(15)

With all administrative offices in Nazi control and with the Reichstag reduced to impotence, the judiciary remained the last obstacle to this reign of terror.(16) But its independence was soon overcome and it was reorganized to dispense a venal justice.(17) Judges were ousted for political or racial reasons and were spied upon and put under pressure to join the Nazi Party.(18) After the Supreme Court had acquitted three of the four men whom the Nazis accused of setting the Reichstag fire, its jurisdiction over treason cases was transferred to a newly established "People's Court" consisting of two judges and five party officials.(19) The German film of this "People's Court" in operation, which we showed in this chamber, revealed its presiding judge pouring partisan abuse upon speechless defendants.(20) Special courts were created to try political crimes, only party members were appointed judges,(21) and "Judges letters" instructed the puppet judges as to the "general lines" they must follow.(22)

The result was the removal of all peaceable means either to resist or to change the government. Having sneaked through the portals of power, the Nazis slammed the gate in the face of all others who might also aspire to enter. Since the law was what the Nazis said it was, every form of opposition was rooted out, and every dissenting voice throttled. Germany was in the clutch of a police state, which used the fear of the concentration camp as a means to enforce non-resistance. The Party was the State, the

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State was the Party, and terror by day and death by night were the policy of both.

2. The Preparation and Waging of Wars of Aggression.

From the moment the Nazis seized power, they set about feverish but stealthy efforts, in defiance of the Versailles Treaty, to arm for war. In 1933 they found no airforce. By 1939 they had 21 squadrons, consisting of 240 echelons or about 2,400 first-line planes, together with trainers and transports. In 1933 they found an army of 3 infantry and 3 cavalry divisions. By 1939 they had raised and equipped an army of 51 divisions, four of which were fully motorized and four of which were panzer divisions. In 1933 they found a navy of one cruiser and 6 light cruisers. By 1939 they had built a navy of 4 battleships, 1 aircraft carrier, 6 cruisers, 22 destroyers, and 54 submarines. They had also built up in that period an armament industry as efficient as that of any country in the world.(23)

These new weapons were put to use, commencing in September 1939, in a series of undeclared wars against nations with which Germany had arbitration and non-aggression treaties, and in violation of repeated assurances.(24) On September 1, 1939 this rearmed Germany attacked Poland. The following April witnessed the invasion and occupation of Denmark and Norway, and May saw the overrunning of Belgium, the Netherlands, and Luxembourg. Another Spring found Yugoslavia and Greece under attack, and in June 1941 came the invasion of Soviet Russia. Then Japan, which Germany had embraced as a partner, struck without warning at Pearl Harbor in December 1941 and four days later Germany declared war on the United States.

We need not trouble ourselves about the many abstract difficulties that can be conjured up about what constitutes aggression in doubtful cases. I shall show you, in discussing the conspiracy,

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that by any test ever put forward by any responsible authority, by all the canons of plain sense, these were unlawful wars of aggression in breach of treaties and in violation of assurances.

3. Warfare in Disregard of International Law.

It is unnecessary to labor this point on the facts. Goering asserts that the Rules of Land Warfare were obsolete, that no nation could fight a total war within their limits.(25) He testified that the Nazis would have denounced the Conventions to which Germany was a party, but that General Jodl wanted captured German soldiers to continue to benefit from their observance by the Allies.(26)

It was, however, against the Soviet people and Soviet prisoners that Teutonic fury knew no bounds, in spite of a warning by Admiral Canaris that the treatment was in violation of International Law.(27)

We need not, therefore, for purposes of the Conspiracy count, recite the revolting details of starving, beating, murdering, freezing, and mass extermination admittedly used against the eastern soldiery. Also, we may take as established or admitted that the lawless conduct such as shooting British and American airmen, mistreatment of Western prisoners of war, forcing French prisoners of war into German war work, and other deliberate violations of the Hague and Geneva Conventions, did occur, and in obedience to highest levels of authority.(28)

4. Enslavement and Plunder of Populations In Occupied Countries.

The defendant Sauckel, Plenipotentiary General for the Utilization of Labor,(29) is authority for the statement that "out of five million foreign workers who arrived in Germany, not even 200,000 came voluntarily."(30) It was officially reported to defendant Rosenberg that in his territory "recruiting methods were used which probably have their origin in the blackest period of the slave

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trade."(31) Sauckel himself reported that male and female agents went hunting for men, got them drunk, and "shanghaied" them to Germany.(32) These captives were shipped in trains without heat, food, or sanitary facilities. The dead were thrown out at stations, and the newborn were thrown out the windows of moving trains.(33)

Sauckel ordered that "all the men must be fed, sheltered and treated in such a way as to exploit them to the highest possible extent at the lowest conceivable degree of expenditure."(34) About two million of these were employed directly in the manufacture of armaments and munitions.(35) The director of the Krupp Locomotive factory in Essen complained to the company that Russian forced laborers were so underfed that they were too weakened to do their work,(36) and the Krupp doctor confirmed their pitiable condition.(37) Soviet workers were put in camps under Gestapo guards, who were allowed to punish disobedience by confinement in a concentration camp or by hanging on the spot.(38)

Populations of occupied countries were otherwise exploited and oppressed unmercifully. Terrorism was the order of the day. Civilians were arrested without charges, committed without counsel, executed without hearing. Villages were destroyed, the male inhabitants shot or sent to concentration camps, the women sent to forced labor, and the children scattered abroad.(39) The extent of the slaughter im Poland alone was indicated by Frank, who reported:

> "If I wanted to have a poster put up for every seven Poles who were shot, the forests of Poland would not suffice for producing the paper for such posters."(40)

Those who will enslave men cannot be expected to refrain from plundering them. Boastful reports show how thoroughly and scientifically the resources of occupied lands were sucked into the German war economy, inflicting shortage, hunger, and inflation upon

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the inhabitants.(41) Besides this grand plan to aid the German war effort there were the sordid activities of the Rosenberg Einsatzstab, which pillaged art treasures for Goering and his fellow-bandits.(42) It is hard to say whether the spectacle of Germany's No. 2 leader urging his people to give up every comfort and strain every sinew on essential war work while he rushed around confiscating art by the trainload should be cast as tragedy or comedy. In either case it was a crime.

International Law at all times before and during this war spoke with precision and authority respecting the protection due civilians of an occupied country,(43) and the slave trade and plunder of occupied countries was at all times flagrantly unlawful.

5. Persecution and Extermination of Jews and Christians

The Nazi movement will be of evil memory in history because of its persecution of the Jews, the most far-flung and terrible racial persecution of all time. Although the Nazi party neither invented nor monopolized anti-Semitism, its leaders from the very beginning embraced it, incited it, and exploited it. They used it as "the psychological spark that ignites the mob." After the seizure of power, it became an official state policy. The persecution began in a series of discriminatory laws eliminating the Jews from the civil service, the professions, and economic life. As it became more intense it included segregation of Jews in ghettos, and exile. Riots were organized by party leaders to loot Jewish business places and to burn synagogues. Jewish property was confiscated and a collective fine of a billion marks was imposed upon German Jewry. The program progressed in fury and irresponsibility to the "final solution." This consisted of sending all Jews who were fit to work to concentration camps as slave laborers, and all who were not fit, which included children under 12 and people over 50, as well as any others judged unfit by an SS doctor, to concentration camps for extermination.(44)

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Adolf Eichmann, the sinister figure who had charge of the extermination program, has estimated that the anti-Jewish activities resulted in the killing of six million Jews. Of these, four million were killed in extermination institutions, and two million were killed by Einsatzgruppen, mobile units of the Security Police and SD which pursued Jews in the ghettos and in their homes and slaughtered them by gas wagons, by mass shooting in anti-tank ditches and by every device which Nazi ingenuity could conceive. So thorough and uncompromising was this program that the Jews of Europe as a race no longer exist, thus fulfilling the diabolic "prophecy" of Adolf Hitler at the beginning of the war.(45)

Of course, any such program must reckon with the opposition of the Christian Church. This was recognized from the very beginning. Defendant Bormann wrote all Gauleiters in 1941 that "National Socialism and Christian concepts are irreconciliable," and that the people must be separated from the Churches and the influence of the Churches totally removed.(46) Defendant Rosenberg even wrote dreary treatises advocating a new and weird Nazi religion.(47)

The Gestapo appointed "Church specialists" who were instructed that the ultimate aim was "destruction of the confessional Churches."(48) The record is full of specific instances of the persecution of clergymen,(49) the confiscation of Church property,(50) interference with religious publications,(51) disruption of religious education,(52) and suppression of religious organizations.(53)

The chief instrumentality for persecution and extermination was the concentration camp, sired by defendant Goering and nurtured under the overall authority of defendants Frick and Kaltenbrunner.

The horrors of these iniquitous places have been vividly disclosed by documents(54) and testified to by witnesses.(55) The Tribunal must be satiated with ghastly verbal and pictorial portrayals. From your records it is clear that the concentration camps were the

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first and worst weapon of oppression used by the National Socialist State, and that they were the primary means utilized for the persecution of the Christian Church and the extermination of the Jewish race. This has been admitted to you by some of the defendants from the witness stand.(56) In the words of defendant Frank:

> "A thousand years will pass and this guilt of Germany will still not be erased."(57)

These, then, were the five great substantive crimes of the Nazi regime. Their commission, which cannot be denied, stands admitted. The defendant Keitel, who is in a position to know the facts, has given the Tribunal what seems to be a fair summation of the case on these facts:

> "The defendant has declared that he admits the contents of the general Indictment to be proved from the objective and factual point of view (that is to say, not every individual case) and this in consideration of the law of procedure governing this trial. It would be senseless, despite the possibility of refuting several documents or individual facts to attempt to shake the Indictment as a whole."(58)

I pass now to the inquiry whether these groups of criminal acts were integrated in a common plan or conspiracy.

THE COMMON PLAN OR CONSPIRACY

The prosecution submits that these five categories of premeditated crimes were not separate and independent phenomena but that all were committed pursuant to a common plan or conspiracy. The defense admits that these classes of crimes were committed but denies that they are connected one with another as parts of a single program

The central crime in this patter of crime, the kingpin which holds them all together, is the plot for aggressive war. The chief reason for international cognizance of these crimes lies in this fact. Have we established the plan or conspiracy to make aggressive war?

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Certain admitted or clearly proven facts help answer that question. First is the fact that such war of aggression did take place. Second, it is admitted that from the moment the Nazis came to power, everyone of them and every one of the defendants worked like beavers to prepare for some war. The question therefore comes to this: Were they preparing for the war which did occur, or were they preparing for some war which never has happened? It is probably true that in the early days none of them had in mind what month of what year war would begin, the exact dispute which would precipitate it, or whether its first impact would be Austria, Czechoslovakia, or Poland. But I submit that the defendants either knew or are chargeable with knowledge that the war for which they were making ready would be a war of German aggression. This is partly because there was no real expectation that any power or combination of powers would attack Germany. But it is chiefly because the inherent nature of the German plans was such that they were certain sooner or later to meet resistance and that they could then be accomplished only by aggression.

The plans of Adolf Hitler for aggression were just as secret as "MEIN KAMPF," of which over six million copies were published in Germany. He not only openly advocated overthrowing the Treaty of Versailles, but made demands which went far beyond a mere rectification of its alleged injustices.(59) He avowed an intention to attack neighboring states and seize their lands,(60) which he said would have to be won with "the power of a triumphant sword."(61) Here, for every German to hearken to, were the "ancestral voices prophesying war."

Goering has testified in this courtroom that at his first meeting with Hitler, long before the seizure of power,

> "I noted that Hitler had a definite view of the impotency of protest and, as a second point, that he was of the opinion that Germany should be freed of the Peace of Versailles.*** We did not say we shall have to have a war and defeat our enemies; this was the aim and the methods had to be adapted to the political situation."(62)

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When asked if this goal were to be accomplished by war if necessary, Goering did not deny that eventuality but evaded a direct answer by saying, "We did not even debate about thosethings at that time." He went on to say that the aim to overthrow the Treaty of Versailles was open and notorious and that "every German in my opinion was for its modification, and there was no doubt that this was a strong inducement for joining the party."(63) Thus, there can be no possible excuse for any person who aided Hitler to get absolute power over the German people, or took a part in his regime, to fail to know the nature of the demands he would make on Germany's neighbors.

Immediately after the seizure of power the Nazis went to work to implement these aggressive intentions by preparing for war. They first enlisted German industrialists in a secret rearmament program. Twenty days after the seizure of power Schacht was host to Hitler, Goering, and some twenty leading industrialists. Among them were Krupp von Bohlen of the great Krupp armament works and representatives of I. G. Farben and other Ruhr heavy industries. Hitler and Goering explained their program to the industrialists, who became so enthusiastic that they set about to raise three million Reichsmarks to strengthen and confirm the Nazi Party in power.(64) Two months later Krupp was working to bring a reorganized association of German industry into agreement with the political aims of the Nazi government.(65) Krupp later boasted of the success in keeping the German war industries secretly alive and in readiness despite the disarmament clauses of the Versailles Treaty, and recalled the industrialists' enthusiastic acceptance of "the great intentions of the Fuehrer in the rearmament period of 1933-39."(66)

Some two months after Schact had sponsored this first meeting to gain the support of the industrialists, the Nazis moved to harness industrial labor to their aggressive plans. In April 1933 Hitlerordered Dr. Ley "to take over the trade unions," numbering some 6 million members. By Party directive Ley seized the unions, their

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property, and their funds. Union leaders, taken into "protective custody" by the SS and SA were put into concentration camps.(67) The free labor unions were then replaced by a Nazi organization known as the German Labor Front, with Dr. Ley as its head. It was expanded until it controlled over 23 million members.(68) Collective bargaining was eliminated, the voice of labor could not longer be heard as to working conditions, and the labor contract was prescribed by "trustees of labor" appointed by Hitler.(69) The war purpose of this labor program was clearly acknowledged by Robert Ley five days after war broke out, when he declared in a speech that

> "We National Socialist have monopolized all resources and all our energies during the past seven years so as to be able to be equipped for the supreme effort of battle." (70)

The Nazis also proceeded at once to adapt the government to the needs of war. In April 1933 the Cabinet formed a Defense Council, the working committee of which met frequently thereafter. In the meeting of 23 May 1933, at which defendant Keitel presided, the members were instructed that

> "No document must be lost since otherwise the enemy propaganda would make use of it. Matters communicated orally cannot be proven;they can be denied by us in Geneva."(71)

In January 1934, with defendant Jodl present, the Council planned a mobilization calendar and mobilization order for some 240,000 industrial plants. Again it was agreed that nothing should be in writing so that "the military purpose may not be traceable."(72)

On May 21, 1933 the top secret Reich Defense Law was enacted. Defendant Schacht was appointed Plenipotentiary General for War Economy with the task of secretly preparing all economic forces for war and, in the event of mobilization, of financing the war.(73) Schacht's secret efforts were supplemented in October 1936 by the appointment of defendant Goering as Commissioner of the Four-Year Plan, with the duty of putting the entire economy in a state of readiness for war within four years.(74)

A secret program for the accumulation of the raw materials and foreign credits necessary for extensive rearmament was also set on foot immediately upon seizure of power. In September of

1934 the Minister of Economics was already complaining that

> "The task of stockpiling is being hampered by the lack of foreign currency; the need for secrecy and camouflage also is a retarding influence."(75)

Foreign currency controls were at once established.(76) Financing was delegated to the wizard Schacht, who conjured up the MEFO Bill to serve the dual objectives of tapping the short-term money market for rearmament purposes while concealing the amount of these expenditures.(77)

The spirit of the whole Nazi administration was summed up by Goering at a meeting of the Council of Ministers, which included Schacht, on 27 May 1936, when he said,

> "All measures are to be considered from the standpoint of an assured waging of war."(78)

The General Staff, of course, also had to be enlisted in the war plans. Most of the Generals, attracted by the prospect of rebuilding their armies, became willing accomplices. The hold-over Minister of War von Blomberg and the Chief of Staff General von Fritsch, however, were not cordial to the increasingly belligerent policy of the Hitler regime, and by vicious and obscene plotting they were discredited and removed in January 1938.(79) Thereupon, Hitler assumed for himself Supreme Command of the Armed Forces, and the positions of von Blomberg and von Fritsch were filled by others who became, as Blomberg said of Keitel, "a willing tool in Hitler's hands for every one of his decisions."(80) The Generals did not confine their participation to merely military matters. They participated in all major diplomatic and political maneuvers, such as the Obersalzburg meeting where Hitler, flanked by Keitel and other top Generals, issued his virtual ultimatum to Schuschnigg.(81)

As early as November 5, 1937, the plan to attack had begun to take definiteness as to time and victim. In a meeting which included defendants Raeder, Goering, and von Neurath, Hitler stated the cynical objective:

> "The question for Germany is where the greatest possible conquest could be made at the lowest possible cost."

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He discussed various plans for the invasion of Austria and Czechoslovakia, indicating clearly that he was thinking of these territories not as ends in themselves, but as means for further conquest. He pointed out that considerable military and political assistance would be afforded by possession of these lands and discussed the possibility of constituting from them new armies up to a strength of about 12 divisions. The aim he stated boldly and baldly as the acquisition of additional living space in Europe, and recognized that "The German question can be solved only by way of force."(82)

Six months later, emboldened by the bloodless Austrian conquest, Hitler, in a secret directive to Keitel, stated his "unalterable decision to smash Czechoslovakia by military action in the near future."(83) On the same day, Jodl noted in his diary that the Fuehrer had stated his final decision to destroy Czechoslovakia soon and had initiated military preparations all along the line.(84) By April the plan had been perfected to attack Czechoslovakia "with lightning swift action as the result of an 'incident'."(85)

All along the line preparations became more definite for a war of expansion, on the assumption that it would result in world-wide conflict. In September 1938 Admiral Carls officially commented on a "Draft Study of Naval Warfare Against England":

> "There is full agreement with the main theme of the study.
>
> "1. If according to the Fuehrer's decision Germany is to acquire a position as a world power, she needs not only sufficient colonial possessions but also secure naval communications and secure access to the ocean.
>
> "2. Both requirements can only be fulfilled in opposition to Anglo-French interests and will limit their position as world powers. It is unlikely that they can be achieved by peaceful means. The decision to make Germany a world power therefore forces upon us the necessity of making the corresponding preparations for war.

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> "3. War against England means at the same time war against the Empire, against France, probably against Russia as well, and a large number of countries overseas; in fact, against one-half to one-third of the whole world.
>
> "It can only be justified and have a chance of success if it is prepared economically as well as politically and militarily and waged with the aim of conquering for Germany an outlet to the ocean."(86)

This Tribunal knows what categorical assurances were given to an alarmed world after the Anschluss, after Munich, and after the occupation of Bohemia and Moravia, that German ambitions were realized and that Hitler had "no further territorial demands to make in Europe."(87) The record of this trial shows that those promises were calculated deceptions and that those high in the bloody brotherhood of Nazidom knew it.

As early as April 15, 1938 Goering pointed out to Mussolini and Ciano that the possession of those territories would make possible an attack on Poland.(88) Ribbentrop wrote on August 26, 1938 that

> "After the liquidation of the Czechoslovakian question, it will be generally assumed that Poland will be next in turn." (89)

Hitler, after the Polish invasion, boasted that it was the Austrian and Czechoslovakian triumphs by which "the basis for the action against Poland was laid."(90) Goering suited the act to the purpose and gave immediate instructions to exploit for the further strengthening of Germany the war potential, first of the Sudetenland, and then of the whole Protectorate.(91)

By May of 1939 the Nazi preparations had ripened to the point that Hitler confided to defendants Goering, Raeder, Keitel, and others, his readiness "to attack Poland at the first suitable opportunity," even though he recognized that "further successes cannot be attained without the shedding of blood." The larcenous motives behind this decision he made plain in words that echoed

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the covetous theme of "MEIN KAMPF:"

> "Circumstances must be adapted to aims. This is impossible without invasion of foreign states or attacks upon foreign property. Living space, in proportion to the magnitude of the state, is the basis of all power - further successes cannot be attained without expanding our living space in the East ..."(92)

While a credulous world slumbered, snugly blanketed with perfidious assurances of peaceful intentions, the Nazis prepared not merely as before for a war, but now for the war. The defendants Goering, Keitle, Raeder, Frick, and Funk, with others, met as the Reich Defense Council in June of 1939. The minutes, authenticated by Goering, are revealing evidence of the way in which each step of Nazi planning dovetailed with every other. These five key defendants, three months before the first panzer unit had knifed into Poland, were laying plans for "employment of the population in wartime," and had gone so far as to classify industry for priority in labor supply "after five million servicemen' had been called up." They decided upon measures to avoid "confusion when mobilization takes place," and declared a purpose "to gain and maintain the lead in the decisive initial weeks of a war." They then planned to use in production prisoners of war, criminal prisoners, and concentration camp inmates. They then decided on "compulsory work for women in wartime." They had already passed on applications from 1,172,000 specialist workmen for classification as indispensable, and had approved 727,000 of them. They boasted that orders to workers to report for duty "are ready and tied up in bundles at the labor offices." And they resolved to increase the industrial manpower supply by bringing into Germany "hundreds of thousands of workers" from the Protectorate to be "housed together in hutments."(93)

It is the minutes of this significant conclave of many key defendants which disclose how the plan to start the war was coupled

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with the plan to wage the war through the use of illegal sources of labor to maintain production. Hitler, in announcing his plan to attack Poland, had already foreshadowed the slave labor program as one of its corollaries when he cryptically pointed out to defendants Goering, Raeder, Keitel, and others that the Polish population "will be available as a source of labor."(94) This was the part of the plan made good by Frank, who, as Governor General notified Goering that he would supply "at least one million male and female agricultural and industrial workers to the Reich,"(95) and by Sauckel, whose impressments throughout occupied territory aggregated numbers equal to the total population of some of the smaller nations of Europe.

Here also comes to the surface the link between war labor and concentration camps, a manpower source that was increasingly used and with increasing cruelty. An agreement between Himmler and the Minister of Justice Thierack in 1942 provided for "the delivery of anti-social elements from the execution of their sentence to the Reichs Fuehrer SS to be worked to death."(96) An SS directive provided that bedridden prisoners be drafted for work to be performed in bed.(97) The Gestapo ordered 45,000 Jews arrested to increase the "recruitment of manpower into the concentration camps."(98) One hundred thousand Jews were brought from Hungary to augment the camps' manpower.(99) On the initiative of the defendant Doenitz, concentration camp labor was used in the construction of submarines.(100) Concentration camps were thus geared into war production on the one hand, and into the administration of justice and the political aims of the Nazis on the other.

The use of prisoner-of-war labor as here planned also grew with German needs. At a time when every German soldier was needed at the front and forces were not available at home, Russian prisoners of war were forced to man anti-aircraft guns against Allied planes. Field Marshal Milch reflected the Nazi merriment at this flagrant violation of International Law, saying,

> "...This is an amusing thing, that the Russians must work the guns."(101)

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The orders for the treatment of Soviet prisoners of war were so ruthless that Admiral Canaris, pointing out that they would "result in arbitrary mistreatments and killings," protested to the OKW against them as breaches of International Law. The reply of Keitel was unambiguous:

> "The objections arise from the military conception of chivalrous warfare! This is the destruction of an ideology! Therefore I approve and back the measures."(102)

The Geneva Convention would have been thrown overboard openly except that Jodl objected because he wanted the benefits of Allied observance of it while it was not being allowed to hamper the Germans in any way.(103)

Other crimes in the conduct of warfare were planned with equal thoroughness as a means of insuring the victory of German arms. In October 1938, almost a year before the start of the war, the large-scale violation of the established rules of warfare was contemplated as a policy, and the Supreme Command circulated a Most Secret list of devious explanations to be given by the Propaganda Minister in such cases.(104) Even before this time commanders of the armed forces were instructed to employ any means of warfare so long as it facilitated victory.(105) After the war was in progress the orders increased in savagery. A typical Keitel order, demanding use of the "most brutal means," provided that

> "...It is the duty of the troops to use all means without restriction, even against women and children, so long as it insures success."(106)

The German Naval forces were no more immune from the infection than the land forces. Raeder ordered violations of the accepted rules of warfare wherever necessary to gain strategic successes.(107) Doenitz urged his submarine crews not to rescue survivors of torpedoed enemy ships in order to cripple merchant shipping of the Allied nations by decimating their crews.(108)

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Thus, the war crimes against Allied forces and the crimes against humanity committed in occupied territories are incontestably part of the program of making the war because, in the German calculations, they were indispensable to its hope of success.

Similarly, the whole group of pre-war crimes, including the persecutions within Germany, fall into place around the plan for aggressive war like stones in a finely wrought mosaic. Nowhere is the whole catalogue of crimes of Nazi oppression and terrorism within German so well integrated with the crime of war as in that strange mixture of wind and wisdom which makes up the testimony of Hermann Goering. In describing the aims of the Nazi program before the seizure of power, Goering said:

> "The first question was to achieve and establish a different political structure for Germany which would enable Germany to obtain against the Dictate (of Versailles), and not only a protest, but an objection of such a nature that it would actually be considered."(109)

With these purposes, Goering admitted that the plan was made to overthrow the Weimar Republic, to seize power, and to carry out the Nazi program by whatever means were necessary, whether legal or illegal.(110)

From Goering's cross-examination we learn how necessarily the whole program of crime followed.(111) Because they considered a strong state necessary to get rid of the Versailles Treaty, they adopted the fuehrerprinzip. Having seized power, the Nazis thought it necessary to protect it by abolishing parliamentary government and suppressing all organized opposition from political parties.(112) This was reflected in the philosophy of Goering that the opera was more important than the Reichstag.(113) Even the "opposition of each individual person was not tolerated unless it was a matter of unimportance." To insure the suppression of opposition a secret political police was necessary. In order to eliminate incorrigible opponents, it was necessary to establish concentration

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camps and to resort to the device of protective custody. Protective custody, Goering testified, meant that

> "people were arrested and taken into protective custody who had committed no crime but who one might expect, if they remained in freedom, would do all sorts of things to damage the German State."(114)

The same purpose was dominant in the persecution of the Jews. In the beginning, fanaticism and political opportunism played a principal part, for anti-semitism and its allied scapegoat mythology was a vehicle on which the Nazis rode to power. It was for this reason that the filthy Streicher and the blashpemous Rosenberg were welcomed to a place at Party rallies and made leaders and officials of the State or Party. But the Nazis soon regarded the Jews as foremost amongst the opposition to the police state with which they planned to put forward their plans of military aggression. Fear of their pacificism and their opposition to strident nationalism was given as the reason that the Jews had to be driven from the political and economic life of Germany.(115) Accordingly, they were transported like cattle to the concentration camps, where they were utilized as a source of forced labor for war purposes.

At a meeting held on 12 November 1938, two days after the violent anti-Jewish pogroms instigated by Goebbels and carried out by the Party Leadership Corps and the SA, the program for the elimination of the Jews from the German economy was mapped out by Goering, Funk, Heydrich, Goebbels, and other top Nazis. The measures adopted included confinement of the Jews in ghettos, cutting off their food supply, "aryanizing" their shops, and restricting their freedom of movement.(116) Here another purpose behind the Jewish persecutions crept in, for it was the wholesale confiscation of their property which helped finance German rearmament. Although Schacht's plan to have foreign money ransom the entire race within Germany was not adopted, the Jews were stripped

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to the point where Goering was able to advise the Reich Defense Council that the critical situation of the Reich exchequer, due to rearmament, had been relieved "through the billion Reichsmark fine imposed on Jewry, and through profits accrued to the Reich in the aryanization of Jewish enterprises."(117)

A glance over the dock will show that, despite quarrels among themselves, each defendant played a part which fitted in with every other, and that all advanced the common plan. It contradicts experience that men of such diverse backgrounds and talents should so forward each other's aims by coincidence.

The large and varied role of Goering was half militarist and half gangster. He stuck a pudgy finger in every pie. He used his SA musclemen to help bring the gang into power. In order to entrench that power he contrived to have the Reichstag burned, established the Gestapo, and created the concentration camps. He was equally adept at massacring opponents and at framing scandals to get rid of stubborn generals. He built up the Luftwaffe and hurled it at his defenseless neighbors. He was among the foremost in harrying the Jews out of the land. By mobilizing the total economic resources of Germany he made possible the waging of the war which he had taken a large part in planning. He was, next to Hitler, the man who tied the activities of all the defendants together in a common effort.

The parts played by the other defendants, although less comprehensive and less spectacular than that of the Reichsmarshal, were nevertheless integral and necessary contributions to the joint undertaking, without any one of which the success of the common enterprise would have been in jeopardy. There are many specific deeds of which these men have been proven guilty. No purpose would be served -- nor indeed is time available -- to review all the crimes

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which the evidence has charged up to their names. Nevertheless, in viewing the conspiracy as a whole and as an operating mechanism it may be well to recall briefly the outstanding services which each of the men in the dock rendered to the common cause.

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The zealot HESS, before succumbing to wanderlust, was the engineer tending the Party machinery, passing orders and propaganda down to the Leadership Corps, supervising every aspect of Party activities, and maintaining the organization as a loyal and ready instrument of power. When apprehensions abroad threatened the success of the Nazi scheme for conquest, it was the duplicitous Ribbentrop, the salesman of deception, who was detailed to pour wine on the troubled waters of suspicion by preaching the gospel of limited and peaceful intentions. KEITEL, weak and willing tool, delivered the armed forces, the instrument of aggression, over to the Party and directed them in executing its felonous designs.

KALTENBRUNNER, the grand inquisitor, took up the bloody mantle of Heydrich to stifle opposition and terrorize compliance, and buttressed the power of National Socialism on a foundation of guiltless corpses. It was ROSENBERG, the intellectual high priest of the "master race," who provided the doctrine of hatred which gave the impetus for the annihilation of Jewry, and put his infidel theories into practice against the eastern occupied territories. His wooly philosophy also added boredom to the long list of Nazi atrocities. The fanatical FRANK, who solidified Nazi control by establishing the new order of authority without law, so that the will of the Party was the only test of legality, proceeded to export his lawlessness to Poland, which he governed with the lash of Caesar and whose population he reduced to sorrowing remnants. FRICK, the ruthless organizer, helped the Party to seize power, supervised the police agencies to insure that it stayed in power, and chained the economy of Bohemia and Moravia to the German war machine.

STREICHER, the venomous vulgarian, manufactured and distributed obscene racial libels which incited the populace to accept and assist the progressively savage operations of "race purification." As Minister of Economics FUNK accelerated the pace of rearmament, and as Reichsbank president banked for the SS the gold teeth fillings of conc[illegible] camp victims -- probably the most ghoulish collateral in banking history. It was SCHACHT, the facade of starched respectability, who in the early days provided the window dressing, the bait for the hesitant, and whose wizardry later made it possible for Hitler

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to finance the colossal rearmament program, and to do it secretly.

DOENITZ, Hitler's legatee of defeat, promoted the success of the Nazi aggressions by instructing his pack of submarine killers to conduct warfare at sea with the illegal ferocity of the jungle. RAEDER, the political admiral, stealthily built up the German navy in defiance of the Versailles Treaty, and then put it to use in a series of aggressions which he had taken a large part in planning. VON SCHIRACH, poisoner of a generation, initiated the German youth in Nazi doctrine, trained them in legions for service in the SS and Wehrmacht, and delivered them up to the Party as fanatic, unquestioning executors of its will.

SAUCKEL, the greatest and cruelest slaver since the Pharaohs of Egypt, produced desperately needed manpower by driving foreign peoples into the land of bondage on a scale unknown even in the ancient days of tyranny in the kingdom of the Nile. JODL, betrayer of the traditions of his profession, led the Wehrmacht in violating its own code of military honor in order to carry out the barbarous aims of Nazi policy. VON PAPEN, pious agent of an infidel regime, held the stirrup while Hitler vaulted into the saddle, lubricated the Austrian annexation, and devoted his diplomatic cunning to the service of Nazi objectives abroad.

SEYSS-INQUART, spearhead of the Austrian fifth-column, took over the government of his own country only to make a present of it to Hitler, and then, moving north, brought terror and oppression to the Netherlands and pillaged its economy for the benefit of the German juggernaut. VON NEURATH, the old-school diplomat, who cast the pearls of his experience before Nazis, guided Nazi diplomacy in the early years, soothed the fears of prospective victims, and as Reich Protector of Bohemia and Moravia, strengthened the German position for the coming attack on Poland. SPEER, as Minister of Armaments and War Production, joined in planning and executing the program to dragoon prisoners of war and foreign workers into German war industries, which waxed in output while the laborers waned in starvation. FRITSCHE, radio propaganda chief, by manipulation of the truth goaded German public opinion into frenzied support of the regime and anesthetized the independent judgment of the population so that they did without question their masters' bidding. And BORMANN,

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who has not accepted our invitation to this reunion, sat at the throttle of the vast and powerful engine of the Party, guiding it in the ruthless execution of Nazi policies, from the scourging of the Christian Church to the lynching of captive Allied airmen.

The activities of all these defendants, despite their varied backgrounds and talents, were joined with the efforts of other conspirators not now in the dock, who played still other essential roles. They blend together into one consistent and militant pattern animated by a common objective to reshape the map of Europe by force of arms. Some of these defendants were ardent members of the Nazi movement from its birth. Others, less fanatical, joined the common enterprise later, after successes had made participation attractive by the promise of rewards. This group of latter-day converts remedied a crucial defect in the ranks of the original true believ[illegible], as Dr. Seimers has pointed out in his summation:

> "...There were no specialists among the National Socialists for the particular tasks. Most of the National Socialist collaborators did not previously follow a trade requiring technical education."(118)

It was the fatal weakness of the early Nazi band that it lacked technical competence. It could not from among its own ranks make up a government capable of carrying out all the projects necessary to realize its aims. Therein lies the special crime and betrayal of men like Schacht and von Neurath, Speer and von Papen, Raeder and Doenitz, Keitel and Jodl. It is doubtful whether the Nazi master plan could have succeeded without their specialized intelligence which they so willingly put at its command.(119) They did so with knowledge of its announced aims and methods, and continued their services after practice had confirmed the direction in which they were tending. Their superiority to the average run of Nazi mediocrity is not their excuse. It is their condemnation.

The dominant fact which stands [illegible] all the thousands of pages of the record of this trial is that the central crime of the whole group of Nazi crimes -- the attack on the peace of the world -- was clearly and deliberately planned. The beginning of these wars of aggression was not an unprepared and spontaneous springing to arms by a population excited by some current indignation. A week before the invasion of Poland Hitler told his military commanders:

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> "I shall give a propagandist cause for starting war -- never mind whether it be plausible or not. The victor shall not be asked later on whether we told the truth or not. In starting and making a war, not the right is what matters, but victory."(120)

The propagandist incident was duly provided by dressing concentration camp inmates in Polish uniforms, in order to create the appearance of a Polish attack on a German frontier radio station.(121) The plan to occupy Belgium, Holland, and Luxembourg first appeared as early as August 1938 in connection with the plan for attack on Czechoslovakia.(122) The intention to attack became a program in May 1939, when Hitler told his commanders that -

> "The Dutch and Belgian air bases must be occupied by armed forces. Declarations of neutrality must be ignored."(123)

Thus, the follow-up wars were planned before the first was launched. These were the most carefully plotted wars in all history. Scarcely a step in their terrifying succession and progress failed to move according to the master blueprint or the subsidiary schedules and timetables until long after the crimes of aggression were consummated.

Nor were the war crimes and the crimes against humanity unplanned, isolated, or spontaneous offenses. Aside from our undeniable evidence of their plotting, it is sufficient to ask whether six million people could be separated from the population of several nations on the basis of their blood and birth, could be destroyed and their bodies disposed of, except that the operation fitted into the general scheme of government. Could the enslavement of five millions of laborers, their impressment into service, their transportation to Germany, their allocation to work where they would be most useful, their maintenance, if slow starvation can be called maintenance, and their guarding have been accomplished if it did not fit into the common plan? Could hundreds of concentration camps located throughout Germany, built to accommodate hundreds of thousands of victims, and each requiring labor and materials for construction, manpower to operate and supervise, and close gearing into the economy -- could such efforts have been expended under German autocracy if they had not suited the plan? Has the Teutonic passion for organization become famous for its toleration of non-conforming activity? Each part of the plan fitted into every other. The slave labor program meshed with the needs of industry and

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agriculture, and these in turn synchronized with the military machine. The elaborate propaganda apparatus geared with the program to dominate the people and incite them to a war their sons would have to fight. The armament industries were fed by the concentration camps. The concentration camps were fed by the Gestapo. The Gestapo was fed by the spy system of the Nazi Party. Nothing was permitted under the Nazi iron rule that was not in accordance with the program. Everything of consequence that took place in this regimented society was but a manifestation of a premeditated and unfolding purpose to secure the Nazi state a place in the sun by casting all others into darkness.

COMMON DEFENSES AGAINST THE CHARGE OF COMMON [illegible]

The defendants meet this overwhelming case, some by admitting a limited responsibility,(124) some by putting the blame on others,(125) and some by taking the position, in effect, that while there have been enormous crimes there are no criminals. Time will not permit me to examine each individual and peculiar defense, but there are certain lines of defense common to so many cases that they deserve some consideration.

Counsel for many of the defendants seek to dismiss the conspiracy or common planning charge on the ground that the pattern of the Nazi plan does not fit the concept of conspiracy applicable in German law to the plotting of a highway robbery or a burglary.(126) Their concept of conspiracy is in the terms of a stealthy meeting in the dead of night, in a secluded hideout, in which a group of felons plot every detail of a specific crime. The Charter forestalls resort to such parochial and narrow concepts of conspiracy taken from local law by using the additional and non-technical term, "common plan." Omitting entirely the alternative term of "conspiracy," the Charter reads that "leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan to commit" any of the described crimes "are responsible for all acts performed by any persons in execution of such plan."

The Charter concept of a common plan really represents the conspiracy principle in an international context. A common plan or conspiracy to seize the machinery of a state, to commit crimes against the peace of the world, to

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blot a race out of existence, to enslave millions, and to subjugate and loot whole nations cannot be thought of in the same terms as the plotting of petty crimes, although the same underlying principles are applicable. Little gangsters may plan which will carry a pistol and which a stiletto, who will approach a victim from the front and who from behind, and where they will waylay him. But in planning a war the pistol becomes a Wehrmacht, the stiletto a Luftwaffe. Where to strike is not a choice of dark alleys, but a matter of world geography. The operation involves the manipulation of public opinion, the law of the state, the police power, industry, and finance. The baits and bluffs must be translated into a nation's foreign policy. Likewise, the degree of stealth which points to a guilty purpose in a conspiracy will depend upon its object. The clandestine preparations of a state against international society, although camouflaged to those abroad, might be quite open and notorious among its own people. But stealth is not an essential ingredient of such planning. Parts of the common plan may be proclaimed from the housetops, as anti-Semitism was, and parts of it kept undercover, as rearmament for a long time was. It is a matter of strategy how much of the preparation shall be made public, as was Goering's announcement in 1935 of the creation of an air force, and how much shall be kept covert, as in the case of the Nazis' use of shovels to teach "labor corps" the manual of arms.(127) The forms of this grand type of conspiracy are amorphous, the means are opportunistic, and neither can divert the law from getting at the substance of things.

The defendants contend, however, that there could be no conspiracy involving aggressive war because (1) none of the Nazis wanted war;(128) (2) rearmament was only intended to provide the strength to make Germany's voice heard in the family of nations;(129) and (3) the wars were not in fact aggressive wars but were defensive against a "Bolshevik menace."(130)

When we analyze the argument that the Nazis did not want war it comes down, in substance, to this: "The record looks bad indeed -- objectively -- but when you consider the state of my mind -- subjectively I hated war. I knew the horrors of war. I wanted peace." I am not so sure of this. I am even less willing to accept Goering's description of the General Staff as pacifist.(131) However, it will not injure our case to admit that as an abstract

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proposition none of these defendants liked war.(132) But they wanted things which they knew they could not get without war. They wanted their neighbors' lands and goods. Their philosophy seems to be that if the neighbors would not acquiesce, then they are the aggressors and are to blame for the war. The fact is, however, that war never became terrible to the Nazis until it came home to them, until it exposed their deceptive assurances to the German people that German cities, like the ruined one in which we meet, would be invulnerable. From then on war was terrible.

But again the defendants claim, "To be sure we were building guns. But not to shoot. They were only to give us weight in negotiating." At its best this argument amounts to a contention that the military forces were intended for blackmail, not for battle. The threat of military invasion which forced the Austrian Anschluss, the threats which preceded Munich, and Goering's threat to bomb the beautiful city of Prague if the President of Czechoslovakia did not consent to the Protectorate,(133) are examples of what the defendants have in mind when they talk of arming to back negotiation.

But from the very nature of German demands, the day was bound to come when some country would refuse to buy its peace, would refuse to pay Dane-geld, —

> "For the end of that game is oppression and shame,
> And the nation that plays it is lost."

Did these defendants then intend to withdraw German demands, or was Germany to enforce them and manipulate propaganda so as to place the blame for the war on the nation so unreasonable as to resist? Events have answered that question, and documents such as Admiral Carl's memorandum, earlier quoted, leave no doubt that the events occurred as anticipated.(134)

But some of the defendants argue that the wars were not aggressive and were only intended to protect Germany against some eventual danger from the "menace of Communism," which was something of an obsession with many Nazis.

At the outset this argument of self-defense falls because it completely ignores this damning combination of facts clearly established in the record: first, the enormous and rapid German preparations for war; second, the repeatedly avowed intentions of the German leaders to attack, which I have previously

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cited; and third, the fact that a series of wars occurred in which German forces struck the first blows, without warning, across the borders of other nations.

Even if it could be shown -- which it cannot be -- that the Russian war was really defensive, such is demonstrably not the case with those wars which preceded it.

It may also be pointed out that even those who would have you believe that Germany was menaced by Communism also compete with each other in describing their opposition to the disastrous Russian venture.(135) Is it reasonable that they would have opposed that war if it were undertaken in good faith self-defense?

The frivolous character of the self-defense theory on the facts it is sought to compensate, as advocates often do, by resort to a theory of law. Dr. Jahrreiss, in his scholarly argument for the defense, rightly points out that no treaty provision and no principle of law denied Germany, as a sovereign nation, the right of self-defense. He follows with the assertion, for which there is authority in classic International Law, that

> "... every state is alone judge of whether in a given case it is waging a war of self-defense."(136)

It is not necessary to examine the validity of an abstract principle which does not apply to the facts of our case. I do not doubt that if a nation arrived at a judgment that it must resort to war in self-defense, because of conditions affording reasonable grounds for such an honest judgment, any Tribunal would accord it great and perhaps conclusive weight, even if later events proved that judgment mistaken.

But the facts in this case call for no such deference to honest judgment because no such judgment was even pretended, much less honestly made.

In all the documents which disclose the planning and rationalization of these attacks, not one sentence has been or can be cited to show a good faith fear of attack. It may be that statesmen of other nations lacked the courage forthrightly and fully to disarm. Perhaps they suspected the secret rearmament of Germany. But if they hesitated to abandon arms, they did not hesitate to neglect them. Germany well knew that her former enemies had allowed their armaments to fall into decay, so little did they contemplate

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another war. Germany faced a Europe that not only was unwilling to attack, but was too weak and pacifist even adequately to defend, and went to the very verge of dishonor, if not beyond, to buy its peace. The minutes we have shown you of the Nazis' secret conclaves identify no potential attacker. They bristle with the spirit of aggression and not of defense. They contemplate always territorial expansion, not the maintenance of territorial integrity.

Minister of War von Blomberg, in his 1937 directive prescribing general principles for the preparation for war of the armed forces, has given the lie to these feeble claims of self-defense. He stated at that time:

> "The general political situation justifies the supposition that Germany need not consider an attack on any side. Grounds for this are, in addition to the lack of desire for war in almost all nations, particularly the Western Powers, the deficiencies in the preparedness for war in a number of states and of Russia in particular."

Nevertheless, he recommended

> "a continuous preparedness for war in order to (a) counter-attack at any time, and (b) to enable the military exploitation of politically favorable opportunities should they occur."(137)

If these defendants may now cynically plead self-defense, although no good faith need of self-defense was asserted or contemplated by any responsible leader at the time, it reduces non-aggression treaties to a legal absurdity. They become only additional instruments of deception in the hands of the aggressor, and traps for well-meaning nations. If there be in non-aggression pacts an implied condition that each nation may make a bona fide judgment as to the necessity for self-defense against imminent threatened attack, they certainly cannot be invoked to shelter those who never made any such judgment at all.

In opening this case I ventured to predict that there would be no serious denial that the crimes charged were committed, and that the issue would concern the responsibility of particular defendants. The defendants have fulfilled that prophecy. Generally, they do not deny that these things happened, but it is contended that they "just happened," and that they were not the result of a common plan or conspiracy.

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One of the chief reasons the defendants say there was no conspiracy is the argument that conspiracy was impossible with a dictator.(138) The argument runs that they all had to obey Hitler's orders, which had the force of law in the German State, and hence obedience cannot be made the basis of a criminal charge. In this way it is explained that while there have been wholesale killings, there have been no murderers.

This argument is an effort to evade Article 8 of the Charter, which provides that the order of the government or of a superior shall not free a defendant from responsibility but can only be considered in mitigation. This provision of the Charter corresponds with the justice and with the realities of the situation, as indicated in defendant Speer's description of what he considered to be the common responsibility of the leaders of the German nation:

> "... with reference to utterly decisive matters, there is total responsibility. There must be total responsibility insofar as a person is one of the leaders, because who else could assume responsibility for the development of events, if not the immediate associates who work with and around the head of the state?"(139)

And again he told the Tribunal:

> "... it is impossible after the catastrophe to evade this total responsibility. If the war had been won, the leaders would also have assumed total responsibility."(140)

Like much of defense counsel's abstract arguments, the contention that the absolute power of Hitler precluded a conspiracy crumbles in face of the facts of record. The Fuehrerprinzip of absolutism was itself a part of the common plan, as Goering has pointed out.(141) The defendants may have become slaves of a dictator, but he was their dictator. To make him such was, as Goering has testified, the object of the Nazi movement from the beginning. Every Nazi took this oath:

> "I pledge eternal allegiance to Adolf Hitler. I pledge unconditional obedience to him and the fuehrers appointed by him."(142)

Moreover, they forced everybody else in their power to take it. This oath was illegal under German law, which made it criminal to become a member of an organization in which obedience to "unknown superiors or unconditional obedience to known superiors is pledged."(143) These men destroyed free government in Germany and now plead to be excused from responsibility because they became

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slaves. They are in the position of the fictional boy who murdered his father and mother and then pleaded for leniency because he was an orphan.

What these men have overlooked is that Adolf Hitler's acts are their acts. It was these men among millions of others, and it was these men leading millions of others, who built up Adolf Hitler and vested in his psychopathic personality not only innumerable lesser decisions but the supreme issue of war or peace. They intoxicated him with power and adulation. They fed his hates and aroused his fears. They put a loaded gun in his eager hands. It was left to Hitler to pull the trigger, and when he did they all at that time approved. His guilt stands admitted, by some defendants reluctantly, by some vindictively. But his guilt is the guilt of the whole dock, and of every man in it.

But it is urged that these defendants could not be in agreement on a common plan or in a conspiracy because they were fighting among themselves or belonged to different factions or cliques. Of course, it is not necessary that men should agree on everything in order to agree on enough things to make them liable for a criminal conspiracy. Unquestionably there were conspiracies within the conspiracy, and intrigues and rivalries and battles for power. Schacht and Goering disagreed, but over which of them should control the economy, not over whether the economy should be regimented for war.(144) Goering claims to have departed from the plan because through Dahlerus he conducted some negotiations with men of influence in England just before the Polish war. But it is perfectly clear that this was not an effort to prevent aggression against Poland but to make that aggression successful and safe by obtaining English neutrality.(145) Rosenberg and Goering may have had some differences as to how stolen art should be distributed but they had none about how it should be stolen. Jodl and Goebbels may have disagreed about whether to denounce the Geneva Convention, but they never disagreed about violating it. And so it goes through the whole long and sordid story. Nowhere do we find an instance where any one of the defendants stood up against the rest and said, This thing is wrong and I will not go along with it. Wherever they differed, their differences were as to method or disputes over jurisdiction,

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but always within the framework of the common plan.

Some of the defendants also contend that in any event there was no conspiracy to commit war crimes or crimes against humanity because cabinet members never met with the military to plan these acts. But these crimes were only the inevitable and incidental results of the plan to commit the aggression for Lebensraum purposes. Hitler stated, at a conference with his commanders, that

> "The main objective in Poland is the destruction of the enemy and not the reaching of a certain geographical line."(146)

Frank picked up the tune and suggested that when their usefulness was exhausted,

> "... then, for all I care, mincemeat can be made of the Poles and Ukranians and all the others who run around here - it does not matter what happens."(147)

Reichscommissar Koch in the Ukraine echoed the refrain:

> "I will draw the very last out of this country. I did not come to spread bliss..."(148)

This was Lebensraum on its seamy side. Could men of their practical intelligence expect to get neighboring lands free from the claims of their tenants without committing crimes against humanity?

The last stand of each defendant is that even if there was a conspiracy, he was not in it. It is therefore important in examining their attempts at avoidance of responsibility to know, first of all, just what it is that a conspiracy charge comprehends and punishes.

In conspiracy we do not punish one man for another man's crime. We seek to punish each for his own crime of joining a common criminal plan in which others also participated. The measure of the criminality of the plan and therefore of the guilt of each participant is, of course, the sum total of crimes committed by all in executing the plan. But the gist of the offense is participation in the formulation or execution of the plan. These are rules which every society has found necessary in order to reach men, like these defendants, who never get blood on their own hands but who lay plans that result in the shedding of blood. All over Germany today, in every zone of occupation, little men who carried out these criminal policies under orders are

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being convicted and punished. It would present a vast and unforgiveable caricature of justice if the men who planned these policies and directed those little men should escape all penalty.(149)

These men in this dock, on the face of the record, were not strangers to this program of crime, nor was their connection with it remote or obscure. We find them in the very heart of it. The positions they held show that we have chosen defendants of self-evident responsibility. They are the very top surviving authorities in their respective fields and in the Nazi State. No one lives who, at least until the very last moments of the war, outranked Goering in position, power, and influence. No soldier stood above Keitel and Jodl, and no sailor above Raeder and Doenitz. Who can be responsible for the duplicitous diplomacy if not the Foreign Ministers, von Neurath and Ribbentrop, and the diplomatic handy man, von Papen? Who should be answerable for the oppressive administration of occupied countries if Gauleiters, Protectors, Governors, and Commissars such as Frank, Seyss-Inquart, Frick, von Schirach, von Neurath, and Rosenberg are not? Where shall we look for those who mobilized the economy for total war if we overlook Schacht, and Speer, and Funk? Who was the master of the great slaving enterprise if it was not Sauckel? Where shall we find the hand that ran the concentration camps if it is not the hand of Kaltenbrunner? And who whipped up the hates and fears of the public, and manipulated the Party organizations to incite these crimes, if not Hess, von Schirach, Fritzsche, Bormann, and the unspeakable Julius Streicher? The list of defendants is made up of men who played indispensable and reciprocal parts in this tragedy. The photographs and the films show them again and again together on important occasions. The documents show them agreed on policies and on methods, and all working aggressively for the expansion of Germany by force of arms.

Each of these men made a real contribution to the Nazi plan. Every man had a key part. Deprive the Nazi regime of the functions performed by a Schacht, a Sauckel, a von Papen, or a Goering, and you have a different regime. Look down the rows of fallen men and picture them as the photographic and documentary evidence shows them to have been in their days of power. Is there one whose work did not substantially advance the conspiracy along its

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bloody path towards its bloody goal? Can we assume that the great effort of these men's lives was directed towards ends they never suspected?

To escape the implications of their positions and the inference of guilt from their activities, the defendants are almost unanimous in one defense. The refrain is heard time and again: these men were without authority, without knowledge, without influence, indeed without importance. Funk sumed up the general self-abasement of the dock in his plaintive lament that,

> "I always, so to speak, came up to the door. But I was not permitted to enter."(150)

In the testimony of each defendant, at some point there was reached the familiar blank wall: nobody knew anything about what was going on. Time after time we have heard the chorus from the dock,

"I only heard about these things here for the first time."(151)

These men saw no evil, spoke none, and none was uttered in their presence. This claim might sound very plausible if made by one defendant. But when we put all their stories together, the impression which emerges of the Third Reich, which was to last a thousand years, is ludicrous. If we combine only the stories from the front bench, this is the ridiculous composite picture of Hitler's government that emerges. It was composed of:

A No. 2 man who knew nothing of the excesses of the Gestapo which he created, and never suspected the Jewish extermination program although he was the signer of over a score of decrees which instituted the persecutions of that race;

A No. 3 man who was merely an innocent middleman transmitting Hitler's orders without even reading them, like a postman or delivery boy;

A Foreign Minister who knew little of foreign affairs and nothing of foreign policy;

A Field Marshal who issued orders to the armed forces but had no idea of the results they would have in practice;

A security chief who was of the impression that the policing functions of his Gestapo and SD were somewhat on the order of directing traffic;

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A Party philosopher who was interested in historical research, and had no idea of the violence which his philosophy was inciting in the Twentieth Century;

A Governor General of Poland who reigned but did not rule;

A Gauleiter of Franconia whose occupation was to pour forth filthy writings about the Jews, but who had no idea that anybody would read them;

A Minister of the Interior who knew not even what went on in the interior of his own office, much less the interior of his own department, and nothing at all about the interior of Germany;

A Reichsbank President who was totally ignorant of what went in and out of the vaults of his bank;

And a Plenipotentiary for the War Economy who secretly marshaled the entire economy for armament, but had no idea it had anything to do with war.

This may seem like a fantastic exaggeration, but this is what you would actually be obliged to conclude if you were to acquit these defendants.

They do protest too much. They deny knowing what was common knowledge. They deny knowing plans and programs that were as public as "MEIN KAMPF" and the Party program. They deny even knowing the contents of documents they received and acted upon.

Nearly all the defendants take two or more conflicting positions. Let us illustrate the inconsistencies of their positions by the record of one defendant -- one who, if pressed, would himself concede that he is the most intelligent, honorable, and innocent man in the dock. That is Schacht. And this is the effect of his own testimony -- but let us not forget that I recite it not against him alone, but because most of its self-contradictions are found in the testimony of several defendants:

Schacht did not openly join the Nazi movement until it had won, nor openly desert it until it had lost. He admits that he never gave it public opposition, but asserts that he never gave it private loyalty. When we demand of him why he did not stop the criminal course of the regime in which he was a Minister, he says he had not a bit of influence. When we ask why

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he remained a member of the criminal regime, he tells us that by sticking on he expected to moderate its program. Like a Brahmin among untouchables, he could not bear to mingle with the Nazis socially, but never could he afford to separate from them politically. Of all the Nazi aggressions by which he now claims to have been shocked,(152) there is not one that he did not support before the world with the weight of his name and prestige. Having armed Hitler to blackmail a continent, his answer now is to blame England and France for yielding.

Schacht always fought for his position in a regime he now affects to despise. He sometimes disagreed with his Nazi confederates about what was expedient in reaching their goal, but he never dissented from the goal itself. When he did break with them in the twilight of the regime, it was over tactics, not principles. From then on he never ceased to urge others to risk their positions and their necks to forward his plots, but never on any occasion did he hazard either of his own. He now boasts that he personally would have shot Hitler if he had had the opportunity, but the German newsreel shows that even after the fall of France, when he faced the living Hitler, he stepped out of line to grasp the hand he now claims to loath and hung upon the words of the man he now says he thought unworthy of belief. Schacht says he steadily "sabotaged" the Hitler government.(153) Yet, the most relentless secret service in the world never detected him doing the regime any harm until long after he knew the war to be lost and the Nazis doomed. Schacht, who dealt in hedges all his life, always kept himself in a position to claim that he was in either camp. The plea for him is as specious on analysis as it is persuasive on first sight. Schacht represents the most dangerous and reprehensible type of opportunism -- that of the man of influential position who is ready to join a movement that he knows to be wrong because he thinks it is winning.

These defendants, unable to deny that they were the men in the very top ranks of power, and unable to deny that the crimes I have outlined actually happened, know that their own denials are incredible unless they can suggest someone who is guilty.

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The defendants have been unanimous, when pressed, in shifting the blame on other men, sometimes on one and sometimes on another. But the names they have repeatedly picked are Hitler, Himmler, Heydrich, Goebbels, and Bormann. All of these are dead or missing. No matter how hard we have pressed the defendants on the stand, they have never pointed the finger at a living man as guilty. It is a temptation to ponder the wondrous workings of a fate which has left only the guilty dead and only the innocent alive. It is almost too remarkable.

The chief villain on whom blame is placed, -- some of the defendants vie with each other in producing appropriate epithets -- is Hitler. He is the man at whom nearly every defendant has pointed an accusing finger.

I shall not dissent from this consensus, nor do I deny that all these dead or missing men shared the guilt. In crimes so reprehensible that degrees of guilt have lost their significance they may have played the most evil parts. But their guilt cannot exculpate the defendants. Hitler did not carry all responsibility to the grave with him. All the guilt is not wrapped in Himmler's shroud. It was these dead whom these living chose to be their partners in this great conspiratorial brotherhood, and the crimes that they did together they must pay for one by one.

It may well be said that Hitler's final crime was against the land that he had ruled. He was a mad messiah who started the war without cause and prolonged it without reason. If he could not rule he cared not what happened to Germany. As Fritzsche has told us from the stand, Hitler tried to use the defeat of Germany for the self-destruction of the German people.(154) He continued the fight when he knew it could not be won, and continuance meant only ruin. Speer, in this courtroom, has described it as follows:

> "... The sacrifices which were made on both sides after January 1945 were without sense. The dead of this period will be the accusers of the man responsible for the continuation of that fight, Adolf Hitler, just as much as the destroyed cities, destroyed in that last phase, who had lost tremendous cultural values and tremendous numbers of dwellings... The German people remained faithful to Adolf Hitler until the end. He has betrayed them knowingly. He has tried to throw it into the abyss..."(155)

Hitler ordered every one else to fight to the last and then retreated into death by his own hand. But he left life as he lived it, a deceiver; he

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left the official report that he had died in battle. This was the man whom these defendants exalted to a Fuehrer. It was they who conspired to get him absolute authority over all of Germany. And in the end he and the system they created for him brought the ruin of them all. As stated by Speer on cross-examination:

> "... the tremendous danger, however, contained in this totalitarian system only became abundantly clear at the moment when we were approaching the end. It was then that one could see what the meaning of the principle was, namely, that every order should be carried out without any criticism. Everything... you have seen in the way of orders which were carried out without any consideration, did after all turn out to be mistakes... This system -- let me put it like this -- to the end of the system it has become clear what tremendous dangers are contained in any such system, as such, quite apart from Hitler's principle. The combination of Hitler and this system, then, brought about this tremendous catastrophe to this world."(156)

But let me for a moment turn devil's advocate. I admit that Hitler was the chief villain. But for the defendants to put all blame on him is neither manly nor true. We know that even the head of a state has the same limits to his senses and to the hours of his day as do lesser men. He must rely on others to be his eyes and ears as to most that goes on in a great empire. Other legs must run his errands; other hands must execute his plans. On whom did Hitler rely for such things more than upon these men in the dock? Who led him to believe he had an invincible air armada if not Goering? Who kept disagreeable facts from him? Did not Goering forbid Fieldmarshal Milch to warn Hitler that in his opinion Germany was not equal to the war upon Russia?(157) Did not Goering, according to Speer, relieve General Galland of his air force command for speaking of the weaknesses and bungling of the air force?(158) Who led Hitler, utterly untraveled himself, to believe in the indecision and timidity of democratic peoples if not Ribbentrop, von Neurath, and von Papen? Who fed his illusion of German invincibility if not Keitel, Jodl, Raeder and Doenitz? Who kept his hatred of the Jew inflamed more than Streicher and Rosenberg? Who would Hitler say deceived him about conditions in concentration camps if not Kaltenbrunner, even as he would deceive us? These men had access to Hitler, and often could control the information that reached him and on

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which he must base his policy and his orders. They were the Praetorian Guard, and while they were under Caesar's orde . Caesar was always in their hands.

If these dead men could take the witness stand and answer what has been said against them, we might have a less distorted picture of the parts played by these defendants. Imagine the stir that would occur in the dock if it should behold Adolf Hitler advancing to the witness box, or Himmler with an armful of dossiers, or Goebbels, or Bormann with the reports of his Party spies, or the murdered Roehm or Canaris. The ghoulish defense that the world is entitled to retribution only from the cadavers, is an argument worthy of the crimes at which it is directed.

We have presented to this Tribunal an affirmative case based on incriminating documents which are sufficient, if unexplained, to require a finding of guilt on Count One against each defendant. In the final analysis, the only question is whether the defendants' own testimony is to be credited as against the documents and other evidence of their guilt. What, then, is their testimony worth?

The fact is that the Nazi habit of economizing in the use of truth pulls the foundations out from under their own defenses. Lying has always been a highly approved Nazi technique. Hitler, in "MEIN KAMPF," advocated mendacity as a policy. von Ribbentrop admits the use of the "diplomatic lie."(159) Keitel advised that the facts of rearmament be kept secret so that they could be denied at Geneva.(160) Raeder deceived about rebuilding the German navy in violation of Versailles.(161) Goering urged Ribbentrop to tell a "legal lie" to the British Foreign Office about the Anschluss, and in so doing only marshaled him the way he was going.(162) Goering gave his word of honor to the Czechs and proceeded to break it.(163) Even Speer proposed to deceive the French into revealing the specially trained among their prisoners.(164)

Nor is the lie direct the only means of falsehood. They all speak with a Nazi doubletalk with which to deceive the unwary. In the Nazi dictionary of sardonic euphemisms "Final solution" of the Jewish problem was a phrase which meant extermination; "Special treatment" of prisoners of war meant

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killing; "Protective custody" meant concentration camp; "Duty labor" meant slave labor; and an order to "take a firm attitude" or "take positive measures" meant to act with unrestrained savagery. Before we accept their word at what seems to be its face, we must always look for hidden meanings. Goering assured us, on his oath, that the Reich Defense Council never met "as such."(165) When we produced the stenographic minutes of a meeting at which he presided and did most of the talking, he reminded us of the "as such" and explained this was not a meeting of the Council "as such" because other persons were present.(166) Goering denies "threatening" Czechoslovakia -- he only told President Hacha that he would "hate to bomb the beautiful city of Prague."(167)

Besides outright false statements and doubletalk, there are also other circumventions of truth in the nature of fantastic explanations and absurd professions. Streicher has solemnly maintained that his only thought with respect to the Jews was to resettle them on the Island of Madagascar.(168) His reason for destroying synagogues, he blandly said, was only because they were architecturally offensive.(169) Rosenberg was stated by his counsel to have always had in mind a "chivalrous solution" to the Jewish problem.(170) When it was necessary to remove Schuschnigg after the Anschluss, Ribbentrop would have had us believe that the Austrian Chancellor was resting at a "villa." It was left to cross-examination to reveal that the "villa" was Buchenwald Concentration Camp.(171) The record is full of other examples of dissimulations and evasions. Even Schacht showed that he, too, had adopted the Nazi attitude that truth is any story which succeeds. Confronted on cross-examination with a long record of broken vows and false words, he declared in justification -

> "I think you can score many more successes when you want to lead someone if you don't tell them the truth than if you tell them the truth."(172)

This was the philosophy of the National Socialists. When for years they have deceived the world, and masked falsehood with plausibilities, can anyone be surprised that they continue the habits of a lifetime in this dock? Credibility is one of the main issues of this trial. Only those who

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have failed to learn the bitter lessons of the last decade can doubt that men who have always played on the unsuspecting credulity of generous opponents would not hesitate to do the same now.

It is against such a background that these defendants now ask this Tribunal to say that they are not guilty of planning, executing, or conspiring to commit this long list of crimes and wrongs. They stand before the record of this trial as blood-stained Gloucester stood by the body of his slain King. He begged of the widow, as they beg of you: "Say I slew them not." And the Queen replied, "Then say they were not slain. But dead they are..." If you were to say of these men that they are not guilty, it would be a true to say there has been no war, there are no slain, there has been no crime.

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THE CRIMES OF THE NAZI REGIME - FOOTNOTES

Footnote Number

1. English transcript, p. 5844.

2. Goering, Reconstruction of a Nation, 1934. (2344-PS, USA-233, Tr.p. 1399).

3. Prime Minister Goering's Press Conference, published in Voelkischer Beobachter, Berlin edition, 23-24 July 1933, p. 1 (2394-PS, USA-F, Tr.p. 255). Goering has admitted excesses in connection with the seizure of power (Tr. p. 5838).

4. Law about changing rules of Criminal Law and Criminal Procedure of 24 April 1934, 1934 Reichsgesetzblatt, Part I, p. 34 (2548-PS, USA-F, Tr.p. 255). (Tr.p. 6051).

5. Decree of the Reich President for protection against treacherous attacks on the government of the Nationalist movement, 21 March 1933. 1933 Reichsgesetzblatt, Part I, p. 135 (1652-PS, USA-F, Tr.p. 255).

6. Decree of the Reich President for the Protection of the People and State, 28 February 1933, 1933 Reichsgesetzblatt, Part I, p. 83 (1390-PS, USA-B, Tr.p. 255) "Sections 114, 115, 117, 118, 123, 124, and 153 of the Constitution of the German Reich are suspended until further notice. Thus, restrictions on personal liberty, on the right of free expression of opinion, including freedom of the press, on the right of assembly and the right of association, and violations of the privacy of postal, telegraphic, and telephonic communications, and warrants for house-searches, orders for confiscations as well as restrictions on property, are also permissible beyond the legal limits otherwise prescribed...Whoever provokes or incites to an act contrary to public welfare is to be punished with a penitentiary sentence, under mitigating circumstances, with imprisonment of not less than three months."

7. Law to change the Penal Code of 28 June 1935, 1935 Reichsgesetzblatt, Part I, p. 839. (1962-PS, USA-F, Tr.p. 255). "Any person who commits an act which the law declares to be punishable or which is deserving of penalty according to the fundamental conceptions of the penal law and sound popular feeling, shall be punished. If there is no penal law directly covering an act it shall be punished under that law which most closely fits, in regards to fundamental conception."

8. Extract from "Germany's Road to Freedom," as published in Documents of German Politics, Vol. 3 (2548-PS, USA-F, Tr.p. 255) "National Socialism substitutes for the conception of formal wrong the idea of factual wrong, it considers every attack against the welfare of the people's community, every violation of the requirements of the life of a nation as a wrong. Therefore wrong may be committed in the future in Germany even in cases when no law threatens it with punishment. Even without the threat of punishment every violation of the goals of life which the community sets up for itself is a wrong."

9. Affidavit of Dr. Hans Anschuetz, 17 November 1945 (2967-PS, USA-756, Tr.p. 255). Ten years of Security Police and SD. (1680-PS, USA-477, Tr.p.1892).

10. Transcript p. 6073. This bureau was camouflaged under the name of "Research Office of the Airforce." (Tr. p. 5880).

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Footnote
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11. Decree of the Reich President for the Protection of the People and State, 28 February 1933, 1933 Reichsgesetzblatt, Part I, p. 83 (1390-PS, USA-F, Tr.p. 255). Supra, Note 5.

12. Organizationbuch der NSDAP, 1943 edition, pp. 99-104 (1893-PS, USA-323, Tr.p. 1578).

13. Meaning and Tasks of the Secret State Police, published in The Archives, January 1936, Vol. 23-24, p. 1342 (1956-PS, USA-F, Tr. p. 255).

14. Original Protective Custody Order served on Dr. R. Kempner, 15 March 1935 (2499-PS, USA-232, Tr. p. 1399). Extract from article "Legislation and Judiciary in Third Reich" from Journal of the Academy for German Law, 1936, pp. 141-142 (2533-PS, USA-F, Tr. p. 255).

15. Law on the Secret State Police of 10 February 1936, Prussian Gesetzemmhung, p. 21. "Orders in matters of the Secret State Police are not subject to review of the administrative courts." (2107-PS, Tr. p. 1904). Summary of decisions of the Supreme Administrative Court, 1935 Reichsverwaltungsblatt, Vol. 56, No. 29, pp. 577-578, 20 July 1935 (2347-PS, Tr. p. 1904).

16. Affidavit of Dr. Hans Anschuetz, 17 November 1945 (2967-PS, USA-756, Tr. p. 255).

17. Letter from Guertner to Mutschmann, 18 January 1935, concerning charges against members of camp personnel of protective custody Camp Hohnstein (783-PS, USA-731, Tr. p. 255). Letters from Minister of Justice to Hess and SA Chief of Staff, 5 June 1935, concerning penal proceedings against merchant and SA Leader and 22 companions because of inflicting bodily injury on duty (784-PS, USA-732, Tr. p. 255). Memorandum of Guertner concerning legal proceedings against the camp personnel of concentration camp Hohmstein (785-PS, USA-733, Tr. p. 255). Minister of Justice memorandum, 29 November 1935, concerning pardon of those sentenced in connection with mistreatment in Hohnstein concentration camp (786-PS, USA-734, Tr. p. 255).

18. Affidavit of Dr. Hans Anschuetz, 17 November 1945 (2967-PS, USA-756, Tr. p. 255).

19. Affidavit of Dr. Hans Anschuetz, 17 November 1945 (2967-PS USA-756, Tr. p. 255). Law amending regulations of criminal law and criminal procedure, 24 April 1934, 1934 Reichsgesetzblatt, Part I, p. 341 (2014-PS, USA-C, Tr. p. 255). Law on People's Court and on 25th Amendment to Salary Law of 18 April 1936, 1936 Reichsgesetzblatt, Part I, p. 169 (2342-PS, USA-C, Tr. p. 255).

20. "The Nazi Plan", excerpt of script of a motion picture composed of captured German film. (3054-PS, USA-167, Tr. p. 1264).

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21. Decree of the Government concerning formation of Special Courts, 21 March 1933, 1933 Reichsgesetzblatt, Part I, pp. 136-137. (2076-PS, USA-C, Tr. p. 255). Decree concerning the extension of the Jurisdiction of Special Courts, 20 November 1938. 1938 Reichsgesetzblatt, Part I, p. 1632, (2056-PS, USA-C, Tr. p. 255). Affidavit of Dr. Hans Anschuetz, 17 November 1945 (2967-PS, USA-756, Tr. p. 255).

22. Extract from German Justice, a legal periodical, 10th year, Edition A, No. 42, 16 October 1942. "The judge is therefore not the supervisor of, but the direct assistant in the Administration of the State. He is responsible to the leadership of the State (Staatsfuhrung) within his sphere of duty for the conservation of the national community. By protecting the national values (Volkische Werte) and eliminating (dangerous elements from the community of the people) he is, in this respect akin to the political leader, the promulgator of national self preservation (Volkische Selbsterhaltung). This point of view must be decisive for the judge. The judge taking it for his guiding principle will find many a decision which seemed very difficult to be solved at first, facilitated." (2482-PS, USA-C, Tr. p. 255). Extract from pamphlet, "Judges Letters", concerning judgment of Lower Court, 24 April 1942, on concealment of Jewish identification (D-229, USA-C, Tr. p. 255).

23. Lecture of Major-General Thomas delivered 24 May 1939, at the Foreign Office (EC-28, USA-760, Tr. pp. 275, 5124).

24. The treaties and assurances applicable to each are specified in Appendix C of the Indictment and remain uncontradicted.

25. English transcript p. 5980. "The Hague Convention was for land warfare. When I scanned it over on the eve of the Polish campaign, I was reading the Articles and I was sorry that I had not studied them much sooner. If I had done so I would have told the Fuehrer that with these rules as they had been put down, paragraph by paragraph, a modern war could not be waged, but that in a modern war, with its technical improvements, the stipulations of 1906 and 1907 would have to be changed in order to have a new type of warfare."

26. English transcript p. 6016.

27. Memorandum of 15 September 1941, from Canaris to Keitel concerning an OKW Order regulating the treatment of Soviet prisoners of war (EC-338, USSR-366, Tr. p. 4441). "The Geneva Convention for the Treatment of Prisoners of war is not binding in the relationship between Germany and the USSR, therefore only the principles of general international law on the treatment of prisoners of war apply. Since the 18th century these have gradually been established along the lines that war captivity is neither revenge nor punishment, but solely protective custody (Sicherheitsschaft) the only purpose of which is to prevent the prisoners of war from a further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people; this is also in the interest of all belligerents in order to prevent mistreatment of their own

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27. (cont'd.) soldiers in case of capture.....The instructions are very general. But if one considers their basic principles the expressly approved measures will result in arbitrary mistreatments and killings, the formal prohibition of arbitrary action notwithstanding."

28. Hitler Commando Order, 18 October 1942 (498-PS, USA-501, Tr. p. 1944, 2173). Night and Fog Decrees, 7 and 12 December 1942 (L-90, USA-503, Tr. p. 1945). Minister of Labor Order on employment of French prisoners of war in armament industry, August 1941 (3005-PS, USA-213, Tr. p. 3010). Himmler Order to protect lynchers of allied fliers, 10 August 1943 (R-110, USA-333, Tr. p. 1624).

29. Decree appointing Sauckel General Plenipotentiary for Manpower, 21 March 1942, and decree of Goering conferring certain powers on Sauckel, 27 March 1942. 1942 Reichsgesetzblatt, Part I, pp. 179-180 (1666-PS, USA-208, pp. 1337, 4063).

30. Speer's conference minutes of Central Planning Board, 1942-44, concerning labor supply. "Our best new engine is made 88% by Russian prisoners of war and the other 12% by German men and women...The list of the shirkers should be entrusted to Himmler's trustworthy hands who will make them work all right." (Milch, p. 26) R-124, USA-179, Tr. pp. 1313, 1320.

31. Top secret memorandum signed by Brautigam, 25 October 1942, concerning conditions in Russia (294-PS, USA-185, Tr. p. 1293)

32. Speer's conference minutes of Central Planning Board, 1942-44, concerning labor supply. (R-124, p. 22, USA 179, Tr. pp. 1286, 1293, 1309, 2989.) By an official directive, "Estates of those who refuse to work are to be burned, their relatives are to be arrested as hostages and to be brought to forced labor camps", and the burning of homes in connection with labor conscription was therefore not considered culpable. Letter from Rosenberg Ministry, 12 November 1943, concerning burning of houses in Mueller's district. (290-PS, USA-189, Tr. p. 1304). The burning down of houses was a method used to force citizens in occupied territories into Reich labor. Letter from Rabb to Reichminister for Occupied Eastern Territories, 7 June 1944, concerning burning of houses in Wassilkow district. (254-PS, USA-188, Tr. p. 1300). Forced labor agents caught persons attending churches and theaters and transported them to the Reich. Lammers report to Himmler, 12 April 1943, concerning the situation in the Government General. (2220-PS, USA-175, Tr. p. 1275).

33. Report to Reich Ministry for Occupied Eastern Territories, 7 October 1942, concerning treatment of Ukrainian Specialists (054-PS, USA-198, Tr. p. 1314). Interdepartmental report of Ministry for Occupied Eastern Territories, 30 September 1942, concerning status of Eastern laborers. "In this train women gave birth to babies who were thrown out of the windows during the journey, people having tuberculosis and venereal diseases rode in the same car, dying people lay in freigh cars without straw, and one of the dead was thrown on the railroad embankment. The same must have occured in other returning transports." (084-PS, USA-199, Tr. p. 1317).

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34. Sauckel's labor Mobilization Program 20 April 1942. "Apart from the prisoners of war still in the occupied territories, we must, therefore, requisition skilled or unskilled male and female labor from the Soviet territory from the age of 15 up for the labor mobilization." p. 7 (016-PS, USA-168, Tr. p. 1319).

35. Affidavit of Edward L. Deuss, 1 November 1945, concerning approximate number of foreign workers for German War Effort in Old Reich (2520-PS, USA-197, Tr. p. 1312).

36. Memorandum to Mr. Hupe, 14 March 1942, concerning employment of Russians. (D-316, USA-201, Tr. p. 1320).

37. Affidavit of Dr. Wilhelm Jaeger, 15 October 1945. "Conditions in all of those camps were extremely bad. The camps were greatly overcrowded. In some camps there were twice as many people in a barrack as health conditions permitted... Camp Humboldstrasse has been inhabitated by Italian prisoners of war. After it had been destroyed by an air raid, the Italians were removed and 600 Jewish females from Buchenwald Concentration Camp were brought in to work at the Krupp factories. Upon my first visit at Camp Humboldstrasse, I found these females suffering from open festering wounds and other diseases. I was the first doctor they had seen for at least a fortnight. There was no doctor in attendance at the Camp. There were no medical supplies in the Camp. They had no shoes and went about in their bare feet. The sole clothing of each consisted of a sack with holes for their arms and head. Their hair was shorn. The Camp was surrounded by barbed wire and closely guarded by SS guards." pp. 1, 5. (D-288, USA-202, Tr. p. 1322).

38. Secret Order of Reichsfuehrer SS, 20 February 1942, concerning commitment of manpower from the East. "In severe case, that is in such cases where the measures at the disposal of the leader of the guard do not suffice, the state police office has to act with its means. Accordingly, they will be treated, as a rule, only with strict measures, that is with transfer to a concentration camp or with special treatment....Special treatment is hanging." (3040-PS, USA-207, Tr. p. 1336).

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39. Order signed Christiansen, 19 March 1943, to all group leaders of Security Service, and record of telephone conversations signed by Stapf, 11 March 1943 (3012-PS, USA-190, Tr. pp. 1304, 12200). Leter of Terboven to Goering, dated 1 May 1942. (R. 134, RD-293, Tr. p. 6235). Goering has admitted the excesses in occupied territories: I do not in any way wish to dispute that things took place which may be debated as far as international law is concerned, and other things occurred which under every circumstance may be considered and must be considered as excesses." (Tr. p. 5932).

40. Excerpts from Frank's Diary. (USSR-223) (English translation p. 43).

41. Stenographic report on conference between Goering and Reich Commissioners for Occupied Territories, 8 August 1942. (USSR-170, Tr. p. 5720; EC-317, Tr.pp. 5903, 5904).

42. Report to Fuehrer regarding confiscated art treasures, 20 March 1941. (014-PS, USA-784, Tr. p. 6213). Field Marshal Kesselring, Goering's subordinate, testified that his method of punishing the small-scale looting of common soldiers under his command was by shooting on the spot. (Tr. p. 5775).

43. Hague Convention IV, Articles 43, 46, 47, 50, 52.

44. Affidavit of Dr. Rudolf Kastner, former president of the Hungarian Zionist Organization, 13 September 1945. (2605-PS, USA-242, Tr. pp. 1408, 1409).

45. Affidavit of Dr. Wilhelm Hoettl, 5 November 1945. (2738-PS, Tr. p. 1502). Affidavits of Hermann Graebe. "Moennikes and I went direct to the pits. Nobody bothered us. Now I heard rifle shots in quick succession, from behind one of the earth mounds. The people who had got off the trucks - men, women, and children of all ages - had to undress upon the orders of an SS-man, who carried a riding or dog whip. They had to put down their clothes in fixed places, sorted according to shoes, top clothing. U saw a heap of shoes of about 800 to 1000 pairs, great piles of under-linen and clothing. Without screaming or weeping these people undressed, stood around in family groups, kissed each other, said farewells and waited for a sign from another SS-man, who stood near the pit, also with a whip in his hand. During the 15 minutes that I stood near the pit I heard no complaint or plea for mercy. I watched a family of about 8 persons, a man and woman, both about 50 with their children of about 1, 8 and 10, and two grown-up daughters of about 20 to 24. An old woman with snow-white hair was holding the one-year old child in her arms and singing to it, and tickling it. The child was cooing with delight. The couple were looking on with tears in their eyes. The father was holding the hand of a boy about 10 years old and speaking to him softly; the boy was fighting his tears. The father pointed toward the sky, stroked his head, and seemed to explain something to him. At that moment the SS-man at the pit shouted something to his comrade. The latter counted off about 20 persons and instructed them to go behind the earth mound. Among them was the family, which I have mentioned. I well remember a girl, slim and with black hair,

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45 (cont'd.) who, as she passed close to me, pointed to herself and said, "23". I walked around the mound, and found myself confronted by a tremendous grave. People were closely wedged together and lying on top of each other so that only their heads were visible. Nearly all had blood running over their shoulders from their heads. Some of the people shot were still moving. Some were lifting their arms and turning their heads to show that they were still alive. The pit was already 2/3 full. I estimated that it already contained about 1000 people. I looked for the man who did the shooting. He was an SS-man, who sat at the edge of the narrow end of the pit, his feet dangling into the pit. He had a tommy gun on his knees and was smoking a cigarette. The people, completely naked, went down some steps which were out in the clay wall of the pit and clambered over the heads of the people lying there, to the place to which the SS-man directed them. They lay down in front of the dead or injured people; some caressed those who were still alive and spoke to them in a low voice. Then I heard a series of shots. I looked into the pit and saw that the bodies were twitching or the heads lying already motionless on top of the bodies that lay before them. Blood was running from their necks. I was surprised that I was not ordered away, but I saw that there were two or three postmen in uniform nearby. The next batch was approaching already. They went down into the pit, lined themselves up against the previous victims and were shot. When I walked back, round the mound I noticed another truck-load of people which had just arrived. This time it included sick and infirm persons. An old, very thin woman with terribly thin legs was undressed by others who were already naked, while two people held her up. The woman appeared to be paralyzed. The naked people carried the woman around the mound. I left with MOENNIKES and drove in my car back to Dubno." (2992-PS, pp. 2, 3; USA-494, Tr. p. 1922).

46. SD Inspector Bierkamp's letter, 12 December 1941, to RSHA, enclosing copy of secret decree signed by Bormann, entitled, "Relationship of National Socialism and Christianity." (D-75, USA-348, Tr. p. 1637).

47. Extracts from "The Myth of the 20th Century", by Alfred Rosenberg, 1941. "A German religious movement which would like to develop into a folk-church will have to declare that the idea of neighborly love is unconditionally to be subordinated to the idea of national honor, that no act of a German church may be approved which does not primarily serve the safeguarding of the folkdom." p. 608. (2340-PS, USA-352, Tr. p. 1642).

48. Documents on RSHA meeting concerning the study and treatment of church positions. (1815-PS, USA-510, Tr. p. 1956).

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49. Secret letter, 21 April 1942, from SS to all concentration camp commanders, concerning treatment of priests (1164-PS, USA-736, Tr. p. 255). Report from the Bavarian Political Police to the Gestapo, Berlin, 24 August 1934, concerning National mourning on occasion of death of von Hindenburg (1521-PS, USA-740, Tr. p. 255). Letter from Kerrl to Minister of State, 23 July 1938, with enclosures dealing with persecution of Bishop Sproll (849-PS, USA-354, Tr. p. 1644). Gestapo telegram from Berlin to Nurnberg, 24 July 1938, dealing with demonstrations against Bishop Sproll in Rottenburg (848-PS, USA-353, Tr. p. 1642). Goering has admitted the policy of sending clergyment to concentration camps. (Tr. p. 5853).

50. Gestapo order, 20 January 1938, dissolving and confiscating property of Catholic Youth Women's Organizations in Bavaria. (1481-PS, USA-737, Tr. p. 255). See also Tr. p. 5846.

51. Order of Frick, 6 November 1934, addressed inter alios to Prussian Gestapo, prohibiting publication of Protestant Church announcements. (1498-PS, USA-739, Tr. p. 255).

52. Bormann's letter to Rosenberg, enclosing copy of letter, 24 January 1939, to Minister of Education, requesting restriction or elimination of theological faculties. (116-PS, USA-685, Tr. p. 2792). Bormann's letter to Rosenberg, 17 April 1939, enclosing copy of Minister of Education letter 6 April 1939, on elimination of theological faculties in various universities. (122-PS, USA-362, Tr. p. 1658).

53. Secret letter, 20 July 1933, to provincial governments and the Prussian Gestapo from Frick, concerning Confessional Youth Organizations. (1482-PS, USA-738, Tr. p. 255). Gestapo order 20 January 1938, dissolving and confiscating property of Catholic Youth Women's Organizations in Bavaria. (1481-PS, USA-737, Tr. p. 255). State Police Order, 28 May 1934 at Dusseldorf, signed Schmid, concerning sanction of denominational youth and professional associations and distribution of publications in churches. (R-145, USA-745, Tr. p. 255).

54. Report by Headquarters, Third United States Army, 21 June 1945, concerning Flossenburg Concentration Camp. (2309-PS, USA-245, Tr. pp. 1398, 1412). Affidavit of Hans Marsalak, 8 April 1946, concerning Mauthausen Concentration Camp and dying statement of Franz Ziereis, the Commandant. (3870-PS, USA-797, Tr. p. 7699). American concentration camp films (2430-PS, USA-79, Tr. p. 593). Soviet atrocity films (USSR-81, Tr. p. 4673). Affidavit of Rudolf Franz Ferdinand Hoess, 5 April 1946: ".....I commanded Auschwitz until 1 December 1943, and estimate that at least 2,500,000 victims were executed and exterminated there by gassing and buring, and at least another half million succumbed to starvation and disease making a total dead of about 3,000,000. This figure represents about 70% or 80% of all persons sent to Auschwitz as prisoners, the remainder having been selected and used for slave labor in the concentration camp industires. Included among the executed and burnt were approximately 20,000 Russian prisoners of war (previously screened out of Prisoner of War cages by the Gestapo) whowere delivered at Auschwitz in Wehrmacht transports operated by regular

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54 (cont'd.) Wehrmacht officers and men. The remainder of the total number of victims included about 100,000 German Jews, and great numbers of citizens, mostly Jewish from Holland, France, Belgium, Poland, Hungary, Czechoslovakia, Greece, or other countries. We executed about 400,000 Hungarian Jews alone at Auschwitz in the summer of 1944.....I visited Teblinka to find out how they carried out their extermination. The Camp Commandant at Treblinka told me that he had liquidated 80,000 in the course of one-half year. He was principally concerned with liquidating all the Jews from the Warsaw Ghetto. He used monoxide gas and I did not think that his methods were very efficient. So when I set up the extermination building at Auschwitz, I cused Cyclon B, which was a crystallized Prussic Acid which we dropped into the death chamber from a small opening. It took from 3 to 15 minutes to kill the people in the death chamber depending upon climatic conditions. We knew when the people were dead because their screaming stopped. We usually waited aboutone-half hour before we opened the doors and removed the bodies. After the bodies were removed our special commandos took off the rings and extracted the gold from the teeth of the corpses.

"Another improvement we made over Treblinka was that we built our gas chambers to accommodate 2,000 people at one time, whereas at Treblinka their 10 gas chambers only accommodated 200 people each. The way we selected our victims was as follows: we had two SS doctors on duty at Auschwitz to examine the incoming transports of prisoners. The prisoners would be marched by one of the doctors who would make spot decisions as they walked by. Those who were fit for work were sent into the Camp. Others were sent immediately to the extermination plants. Children of tender years were invariable exterminated since by reason of their youth they were unable to work. Still another improvement we made over Treblinka was that at Treblinka the victims almost always knew that they were to be exterminated and at Auschwitz we endeavored to fool the victims into thinking that they were to go through a delousing process. Of course, frequently they realized our true intentions and we sometimes had riots and difficulties due to that fact. Very frequently women would hide their children under the clothes but of course when we found them we would send the children to be exterminated. We were required to carry out these exterminations in secrecy but of course the foul and nauseating stench from the continuous burning of bodies permeated the entire area and all of the people living in the surrounding communities knew that exterminations were going on at Auschwitz". (3868-PS, USA-819, Tr. p. 7810).

55. Testimony of Witness Blaha. (Tr. pp. 2592, 2636).
Testimony of Witness Hoess. (Tr. pp. 7785, 7820.)

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56.. Testimony of the Defendant Funk. "... And when these measures of terror and violence against Jews were put up to me, I suffered a nervous breakdown because at the moment it came to my mind with all clearness that from here on the catastrope took its course all the way up to the terrible and atrocious things about which we have heard here and about which I knew only in part from the time of my captivity. I felt ashamed and the feeling of guilt at that moment and I do feel the same way today, but too late." (Tr. pp. 9042-3). von Schirach has testified that "Hitler's racial policy was a crime" (Tr. p. 10295) and that Auschwitz "is the greatest and most devilish mass murder of history." (Tr. p. 10293).

57. Testimony of Frank. "....I myself have never installed an extermination camp for Jews or demanded that they should be installed, but if Adolf Hitler personally has turned that dreadful responsibility over to these people of his, then it must be mine too." (Tr. p. 8099).

58. English transcript p. 13116.

59. Hitler, "Mein Kampf". "In regard to this point I should like to make the following statement: To demand that the 1914 frontiers should be restored is a glaring political absurdity that is fraught with such consequences as to make the claim itself appear criminal. The confines of the Reich as they existed in 1914 were thoroughly illogical....We National Socialists must stick firmly to the aim that we have set for our foreign policy, namely, that the German people must be assured the territorial area which is necessary for it to exist on this earth...The territory on which one day our German peasants will be able to bring forth and nourish their sturdy sons will justify the blood of the sons of the peasants that has to be shed today". (GB-128, Tr. pp. 2281-2).

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60. Hitler, "Mein Kampf" (GB-128, Tr.p. 2285).

61. Hitler, "Mein Kampf". "The soil on which we now live was not a gift bestowed by Heaven on our forefathers. But they had to conquer it by risking their lives. So also in the future our people will not obtain territory, and therewith the means of existence, as a favor from any other people, but will have to win it by the power of a triumphant sword." (GB-128, Tr.p. 2278).

62. English transcript, pp. 6068-9.

63. English transcript, p. 6071.

64. Affidavit of Schmitzler, 10 November 1945 (EC-439, USA-618, Tr.pp. 282, 283, 2532.

65. Letter from Krupp to Hitler, 25 April 1933, with enclosure (D-157, USA-765, Tr.pp. 299, 5124).

66. Krupp speech, "Thoughts about the Industrial Enterpriser," January 1944. "...I have already often repeated orally as well as in writing, and today I also want to restate to this group that, according to the terms of the Dictate of Versailles (Diktat) Krupp had to destroy and demolish considerable quantities of machines and utensils of all kinds. It is the one great merit of the entire German war economy that it did not remain idle during those bad years, even though its activity could not be brought to light for obvious reasons. Through years of secret work, scientific and basic ground work was laid, in order to be ready again to work for the German Armed Forces at the appointed hour, without loss of time or experience." (D-317, USA-770, Tr.p. 289).

67. The Fifth Day of the Party Congress, from Voelkischer Beobachter, Munich (Southern German) Edition, Issue 258, 14 September 1936, (2283-PS, USA-337, Tr.p. 255). The Social Life of the New Germany with Special Consideration of the German Labor Front, containing principal parts of two NSDAP orders directing seizure of unions in 1933, pp. 51-54 (392-PS, USA-326, Tr.p. 1600). Organization Book of the NSDAP, the NSBO, p. 185 (2271-PS, USA-328, Tr.p. 255). Affidavits of Josef Simon, Chairman of German Shoemakers Union in 1933 (2335-PS, USA-749, Tr.p. 255). Affidavits of Lorenz Hagan, Chairman of Local Committee, German Trade Unions, Nurnberg (2334-PS, USA-238, Tr.p. 1405). Affidavit of Mathias Lex, deputy president of the German Shoemakers Union (2928-PS, USA-239, Tr.pp. 1405, 2258). Affidavit, 17 October 1945, of Gustav Schiefer, Chairman of General German Trade Union Association, Local Committee, Munich, 1933 (2277-PS, USA-748, Tr.p. 255). Death certificate, Flossenburg Concentration Camp, concerning union leader Staimer and official letter to his wife, 22 December 1941 (2332-PS, Tr.p. 255). Death certificate, Flossenburg Concentration Camp, concerning union leader Hermann, and official letter to his wife, 29 December 1941 (2333-PS, USA-744, Tr.p. 255).

68. National Socialist Party Correspondence, release of 2 May 1933, p. 1 (2224-PS, USA-364, Tr.pp. 1662-4). Volkischer Beobachter (People's Observer) Munich edition, 17 May 1933, Fuehrer Edict, p. 1, (1940-PS, Tr.p. 255). The German Labor Front, Nature, Goal, Means - Official publication of the German Labor Front, footnote on p. 11 (2275-PS, Tr.p. 255).

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Footnote Number

69. Law concerning trustees of labor, 19 May 1933, 1933 Reichsgesetzblatt, Part I, p. 285 (405-PS, Tr.p. 255).

70. Speech by Ley published in Forge of the Sword, with an introduction by Marshal Goering, pp. 14-17 (1939-PS, Tr.p. 255).

71. Minutes of second session of Working Committee of the Reich Defense held on 26 April 1933 (EC-177, USA-390, Tr.pp. 1699, 1727).

72. Minutes of conference of sixth session of Working Committee of Reich Defense Council, held on 23 and 24 January 1934 (EC-404, USA-764, Tr.pp. 291, 5124).

73. Directive from Blomberg to Supreme Commanders of Army, Navy and Air Forces, 24 June 1935; accompanied by copy of Reich Defense Law of 21 May 1935 and copy of Decision of Reich Cabinet of 12 May 1935 on the Council for defense of the Reich (2261-PS, USA-24, Tr.pp. 277, 292).

74. Memorandum report about the Four Year Plan and preparation of the war economy, 30 December 1936 (EC-408, USA-579, Tr.pp. 279, 281, 287, 5874, 6083).

75. Report on state of preparation for war economic mobilization as of 30 September 1934. (EC-128, USA-623, Tr.pp. 295, 2537).

76. Law against Economic Sabotage, 1936 Reichsgesetzblatt, Part I, p999.

77. Affidavit of Puhl, 2 November 1945. (EC-436, USA-620, Tr.pp. 255, 2535).

78. Minutes of meeting of council of ministers on 27 May 1936. (1301-PS, p. 15, USA-123, Tr.p. 299).

79. English transcript, p. 8342.

80. English transcript, p. 2135.

81. Excerpts from Diary kept by General Jodl, January 1937 to August 1939 (1780-PS, USA-72, Tr.pp. 556, 1157).

82. Notes on a conference with Hitler in the Reich Chancellery, Berlin, 5 November 1937, signed by Hitler's Adjutant, Hossbach, and dated 10 November 1937 (386-PS, USA-25, Tr.pp. 336, 735, 2137).

83. File of papers on Case Green (the plan for the attack on Czechoslovakia) kept by Schmundt, Hitler's Adjutant, April-October 1938 (388-PS, USA-26, Tr.pp. 735, 741-748, 760-765, 769-776, 793, 789-807).

84. Excerpts from Diary kept by General Jodl, January 1937 to August 1939 (1780-PS, USA-72, Tr.pp. 556, 1157).

85. File of papers on Case Green (the plan for the attack on Czechoslovakia) kept by Schmundt, Hitler's Adjutant, April-October 1938 (388-PS, USA-26, Tr.pp. 744).

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Footnote Number

86. Documents found in official Navy files containing notes year by year, from 1927 to 1940, on reconstruction of the German Navy, and dated 18 February 1938, 8 March 1938, September 1938. (C-23, USA-40, Tr.p.449).

87. "Germany neither intends or wishes to interfere in the internal affairs of Austria, to annex Austria, or to unite with Austria." Berlin, May 21, 1935, Voelkischer Beobachter, May 22, 1935. "Immediately after the Anschluss, I informed Yugoslavia that the frontier in common with that country would henceforth be regarded as unalterable by Germany and that we wished to live with her in peace and friendship." (Berlin, Oct. 6, 1939, Voelkischer Beobachter, October 7, 1939. "I have given binding declarations to a number of states. None of these can complain that even a trace of a demand contrary thereto has ever been made to them by Germany. None of the Scandinavian statesmen, for example, can contend that the German Government or that German public opinion has ever made a demand which was incompatible with the sovereignty and integrity of their state." Berlin, April 28, 1939, Voelkischer Beobachter, April 29, 1939. "We have given guarantees to the states in the West and have guaranteed to all contiguous neighbors the inviolability of their territory as far as Germany is concerned. That is not a phrase; that is our sacred will." Berlin, September 26, 1938, Voelkischer Beobachter, September 27, 1938. "Without taking the past into account, Germany has concluded a non-aggression pact with Poland. This is more than a valuable contribution to European peace, and we shall adhere to it unconditionally. We only hope that it will be renewed and continued uninterruptedly and that it will deepen the friendly relations between the two countries. With the understanding and heartfelt friendship of genuine nationalists, we recognize Poland as the home of a great and nationally conscious people." Berlin, May 21, 1935, Voelkischer Beobachter, May 22, 1935. "Germany has steadily given her assurance, and I solemnly repeat this assurance here, that between ourselves and France, for example, there are no grounds for quarrel that are humanly thinkable." Berlin, January 30, 1937, Voelkischer Beobachter, January 31, 1937.

88. Notes on conference between Goering, Mussolini, and Ciano, 15 April 1939 (1874-PS, USA-125, Tr.p. 929).

89. Note for Reichminister, 26 August 1938 (TC-76, GB-31, Tr.p. 980).

90. Speech of Fuehrer at a conference, 23 November 1939, to which all Supreme Commanders were ordered (789-PS, USA-23, Tr.pp. 275, 931).

91. Minutes of conference with Goering at the Air Ministry, 14 October 1938, concerning acceleration of rearmament (1301-PS, USA-123, Tr.pp. 295, 296, 299, 300, 2555, 2556, 2558, 2559, 5136). Notes on conference with Goering in Westerland on 26 July 1939, signed Mueller, dated Berlin, 27 July 1939 (R-123, USA-124, Tr.p. 928).

92. Minutes of conference, 23 May 1939 "Indoctrination on the Political Situation and Future Aims." (L-79, USA-27, Tr.pp. 359, 408, 930).

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Footnote Number	
93.	Minutes of Second Meeting of Reich Defense Council, 23 June 1939 (3787-PS, USA-782, Tr.pp. 6406, 6167, 12875-12886).
94.	Minutes of conference, 23 May 1939, "Indoctrination on the Political Situation and Future Aims." (L-79, USA-27, Tr.pp. 359, 408, 930).
95.	Letter from Frank to Goering, 25 January 1940 (1375-PS, USA-172, Tr.p. 1273).
96.	Thierack's notes, 18 September 1942, on discussion with Himmler concerning delivery of Jews to Himmler for extermination through work (654-PS, USA-218, Tr.pp. 1350, 1950). Letter from Minister of Justice to Prosecutors, 1 April 1944, concerning Poles and Jews who are released from Penal institutions of Department of Justice (701-PS, USA-497, Tr.p. 1940).
97.	Directive of 27 April 1943 to Commanders of Concentration Camps, regarding executions of prisoners (1933-PS, USA-459, Tr.p. 1844).
98.	Copy of telegram from Mueller to Himmler, 16 December 1942, concerning recruiting Jewish labor (1472-PS, USA-279, Tr.p. 1454). Mueller's order, 17 December 1942, concerning prisoners qualified for work to be sent to concentration camps (1063-D-PS, USA-219, Tr.p. 1354).
99.	Speer's conference minutes of Central Planning Board, 1942-44, concerning labor supply, p. 36 (R-124, USA-179, Tr.pp. 1286, 1293, 1309, 2989).
100.	Report signed by Doenitz, 1944, giving support to Navy and Merchant Marine. (C-195 , GB-211, Tr. p. 2709).
101.	Speer's conference minutes of Central Planning Board, 1942-44, concerning labor supply (R-124, USA-179, p. 32, Tr.pp. 1293, 1286, 1309).
102.	Memorandum of 15 September 1941 from Canaris to Keitel concerning an OKW Order regulating the treatment of Soviet prisoners of war (EC-338, USSR-356, Tr.p. 4441).
103.	English transcript, p. 6016.
104.	Examples of violations of International Law and proposed counter propaganda, issued by OKW, 1 October 1938, (C-2, USA-90, Tr.p. 2959).
105.	OKW circular entitled Direction of War as Problem of Organization, 19 April 1938 (L-211, GB-161, Tr.p. 2397).
106.	English transcript p. 5786.
107.	Report by Raeder to Hitler, 16 October 1939 (C-157, GB-224, Tr.p. 2734).
108.	Extract from Befehlshaber der U-bootes; Secret Standing Order No. 154 signed by Doenitz. (D-642, GB-196, Tr.p. 2663).
	Operation Order "Atlantic" No. 56 for U-boats in Atlantic, 7 October 1943 (D-663, GB-200, Tr.p. 2666).

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Footnote Number

109. English transcript, p. 6069.

110. English transcript, p. 5843.

111. English transcript, p. 6050-6052.

112. Extracts from testimony of Goering: "As soon as we had come into power we were decided to keep that power under all circumstances... we could not leave this to the play of coincidence by way of elections and parliamentary majorities..." (Tr.p.5824). "The Laender Parliaments... I considered entirely superfluous... I could not understand why so many different authorities should exist which, with their unnecessary frictions, discussions, arguments, could only prevent constructive work... A further point in the strengthening of power was the elimination of the Reichstag as a parliament... In some cases we suggested to the former parties they dissolve themselves, because they had no purpose, and those who would not dissolve themselves were dissolved by us." (Tr.p. 5828). "...Towards the further strengthening of power, those laws were established which... did away with the so-called freedoms..." (Tr.p. 5829). See also Tr.p. 6049, 6051. Frick accurately predicted the Nazi method of dealing with political opponents when he declared to an opposing member of the Reichstag in 1932, "Don't worry, when we are in power, we shall put all of you guys into concentration camps." (Affidavit of Gebhart H. Seger, L-83, USA-234).

113. English transcript, p. 6064.

114. English transcript, p. 6054.

115. English transcript, p. 5860.

116. Stenographic report of the meeting on The Jewish Question, under the Chairmanship of Fieldmarshal Goering, 12 November 1938, (1816-PS, USA*261, Tr.p. 1440).

117. Memorandum, 19 November 1938, concerning meeting of Reich Defense Council (3575-PS, USA-781, Tr.p. 6406, 6157). See also Tr.p. 5846. For similar reasons Goering preferred the destruction of Jews rather than of their property (1816-PS).

118. English transcript, p. 13706.

119. Other factors were not overlooked. One of the reasons for von Neurath's selection as Foreign Minister at the beginning of the Nazi regime was his excellent connections abroad. (Tr.p. 6024).

120. Hitler's speech to Commanders-in-Chief, 22 August 1939 (1014-PS, USA-30, Tr. p. 377).

121. Affidavit of Alfred Helmut Naujocks, 20 November 1945 (2751-PS, USA-482, Tr. p. 1907). Likewise, Jodl noted in his diary a few weeks before the planned invasion of Norway that the Fuehrer was still looking for an excuse for the operation (1809-PS, GB-88, Tr.p. 1088, 2403).

122. Case Green with wider implications, report of Intelligence Division, Luftwaffe General Staff, 25 August 1938. (375-PS, USA-84, Tr.p. 752).

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123. Minutes of conference, 23 May 1939, "Indoctrination on the political situation and future aims." (L-79, USA-27, Tr.pp. 359, 408, 930).

124. Goering has accepted responsibility for the Nurnberg Laws, which he signed (Tr.p. 5871), for the Austrian Anschluss (Tr.p. 5895), and for the use of prisoners of war in armament industries (Tr.p. 6219). Von Schirach has admitted responsibility for the training of the Hitler Youth: "It is my guilt that I educated the German youth for a man who committed murders million-fold. I believed in that man. That is all that I can say as an explanation for my attitude. But that guilt is my own, my personal guilt. I had the responsibility for the youth. I carried the authority of command; and so I alone carry the guilt for that youth." (Tr.p. 10295). Frank has admitted, "I feel a terrible guilt within me." (Tr.p. 8092).

125. Goering blamed persecution of the churches on Himmler and Bormann. Tr.p. 5856. Schirach blamed extermination of the Jews on Hitler and Himmler: "The murder was ordered by Adolf Hitler... he and Himmler together committed that crime, which of all times is the darkest spot in our history. It is a crime which is shameful to every German." (Tr.p. 10293).

126. Final argument of Dr. Stahmer, counsel for Goering. Tr. pp. 12973, et seq.

127. "The Nazi Plan," excerpt of script of a motion picture composed of captured German film. (3054-PS, USA-167, Tr.p. 1264).

128. Goering testified: "No, I did not want any war..." Tr.p. 6087. Ribbentrop testified: "The Fuehrer has — and then I have upon his orders, and I believe I may be a good witness for it myself — always tried to solve these problems in a diplomatic way." Tr.p. 6826.

129. Goering testified: "to set aside Versailles, the State had to be strong, for a weak State was never listened to; that we know from experience." Tr.p. 6070.

130. Goering testified: "I told the Fuehrer that in spite of this principal point of view I oversaw a menace threatening from Russia; I still would ask him to rather let this menace continue to exist and, if it was at all possible, to try to direct the interests of Russia against England." Tr. p. 5957.

131. English transcript, p. 6048.

132. English transcript, pp. 5894-5, 6036, 6069.

133. English transcript, p. 5998.

134. Other defendants admitted that the wars were aggressive. Schacht testified: "Q. Well, we found something we agree on, Doctor. You knew of the invasion of Poland? A. Yes. Q. As an unqualified act of aggression on Hitler's part? A. Absolutely. Q. And of Holland? A. Absolutely. Q. And of Denmark? A. Absolutely. Q. And of Norway? A. Absolutely. Q. And of Yugoslavia? A. Absolutely. Q. And of Russia? A. Absolutely, sir; and Norway and Belgium, which you left out." Tr. p. 8910.

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135. Goering testified: "I urged him not at that moment or an even short time thereafter to start any war against Russia." Tr.p. 5956; see also Tr.p. 6056. Keitel testified that he wrote a memorandum to Hitler opposing the attack on Russia. He said: "But I did in that memorandum most certainly refer to the fact that the Non-aggression Pact existed." Tr.p. 7096.

136. English transcript, p. 12929.

137. OKW Directive for Unified Preparation for War 1937-1938, with covering letter from von Blomberg, 24 June 1937. (C-175, USA-69, Tr.p. 547). Yet it was in this period that Goering was trying out the strength of his Luftwaffe in the Spanish Civil War (Tr.p. 5871). Goering has admitted the non-defensive nature of the Luftwaffe (Tr.p. 5869).

138. Final argument of Dr. Stahmer, counsel for Goering. "Therefore, a conspiracy with a dictator at its head is a contradiction in itself. A dictator does not enter into a conspiracy with his followers, he does not make any agreement with them, he dictates." Tr.p. 12970.

139. English transcript, p. 12155.

140. English transcript, p. 12183.

141. English transcript, pp. 5854, 6036, 6056.

142. Extracts from Organization Book of the NSDAP, 1943 edition. (1893-PS, USA 333, Tr.p. 1578).

143. Criminal Code, 1871, Sec. 128 (never repealed).

144. Goering testified: "In the case of Schacht he was a very strong personality and whilst not wanting to over-emphasize my importance and disregarding whether we were friends or not, on the basis of the two positions we had to get into difficulties and one or the other had to cede finally." Tr.p. 6082.

145. "Q. Mr. Dahlerus, will you tell me whether I got all of your last answer to Dr. Stahmer correctly? Did you say that 'I then realized that it was on the 26th of September, that his, Goering's aim, had been to split Poland and grab and occupy Poland with the consent of Great Britain'? Is that right? A. Yes, it is correct, but I should like to say it was the German Government's, including Goering's, aim." Tr.p. 6119. The Fuehrer informed Goering some time before the attack on Poland was launched that the task was to "eliminate British intervention." (TC-90, GB-64).

146. Hitler's speech to Commanders-in-Chief, 22 August 1939. (1014-PS, USA-30, Tr.p. 376).

147. Frank Diary. Tagebuch. 1 January 1944 to 28 February 1944. Entry of 14 January, 15 January, 8 February 1944. (2233-BB-PS, USA-295, Tr.p. 1501).

148. Note, 11 April 1943, and report of speech of Koch in Kiev on 5 March 1943, concerning treatment of civilian population in Ukraine. (1130-PS, USA-169, Tr.p. 1269).

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149. Frank testified: "Q. Did you ever participate in the destruction of Jews? A. I say yes, and the reason why I say yes is because, being under the impression of these five months of this trial, and particularly under the impression of the statements made by the witness Hoess, I cannot allow it before my conscience that responsibility for all this should be handed over to these small people alone. I myself have never installed an extermination camp for Jews or demanded that they should be installed, but if Adolf Hitler personally has turned that dreadful responsibility over to these people of his, then it must be mine too. We have fought against Jewry; we have fought against it for years; and we have allowed ourselves to make utterances, and my own diary has become a witness against me in this connection -- utterances which are terrible. It is my duty -- my only duty -- therefore, to answer your question in this connection with Yes. A thousand years will pass and this guilt of Germany will still not be erased." (Tr.p. 8099.)

150. Funk explained that he did not hold "the position of minister as one would generally think of it." (Tr.p. 9014).

151. Ribbentrop, Tr.p. 6857, 6823; Keitel, Tr.p. 7157; Funk, Tr.p. 9118; Goering, Tr.p. 6247.

152. English transcript, p. 891., supra note 121.

153. English transcript, p. 8808, 8814-17, 8923-25.

154. "The fact was that Hitler tried to use this defeat for the self-destruction of the German people, as Speer has testified and confirmed, in a most terrible way, and as I could observe in the last phase of the conflict in Berlin when, under the pretense of a false hope, fifteen-year-old, fourteen-year-old, and thirteen-year-old boys were equipped for war with hand firearms and called into battle, boys who perhaps might have been the hope for the period of reconstruction. Hitler fled into death, and he left the decree and the order to keep on fighting. He also left the official report that he had died in battle. I learned that he had committed suicide, and my last public statement, on 2 May 1945, was the publication of the fact of this suicide, for I wanted to kill a Hitler legend in the bud." (Tr.p. 12547). Dahlerus has recorded his impression of Hitler, before the war, as "a completely abnormal person." (Tr.p. 6125).

155. English transcript, p. 12080.

156. English transcript, p. 12117.

157. Milch testified: "My offer that I would try to speak to Hitler against war once more was rejected by the Reichsmarshal as absolutely hopeless." (Tr.p. 5576).

158. English transcript, p. 121..

159. English transcript, p. 6881.

160. Minutes of second session of Working Committee of the Reich Defense Council held on 26 April 1933. (EC-177, USA-390, Tr.pp. 1699, 1727).

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Footnote Number

161. Raeder testified: "That is the circumvention of the Versailles Treaty as far as that was necessary to improve our defenses, which I explained during the recent days here. It was a matter of honor for every man to do it." (Tr.p. 9919).

162. Goering testified: "During a conversation which I had with Foreign Minister von Ribbentrop who was in London at that time, I stressed that the ultimatum had not been put by ourselves but by Seyss-Inquart. That was absolutely true. Legally, in fact, of course I put it, but that telephone conversation was heard on the English side and I had to conduct a diplomatic conversation, and I have never heard yet that diplomats in such cases say later how it was in fact, but they always stress how it was de jure, and why should I be an exception there?" (Tr.p. 5891). But the transcript of the telephone conversation between Goering and Seyss-Inquart which led to the capitulation of Austria shows Goering saying: "Now, remember the following: You go immediately together with Lt. General Muff and tell the Federal President that if the conditions which are known to you are not accepted immediately, the troops who are already stationed in and advancing to the frontier will march in tonight along the whole line, and Austria will cease to exist." Transcript of telephone calls from Air Ministry, 11-14 March 1938. (2949-PS, USA-76, Tr.p. 566).

163. German assurance to Czechoslovakia of 11 March 1938. (TC-27, GB-21, Tr.p. 962).

164. Speer's conference minutes of Central Planning Board, 1943-44, concerning labor supply. (R-124, USA-179, Tr.pp. 1286, 1293, 1309, 2989).

165. English transcript, p. 5878.

166. English transcript, p. 6150.

167. English transcript, p. 5900; see also Tr.p. 5998.

168. English transcript, p. 8527.

169. English transcript, pp. 8516-19.

170. English transcript, p. 13276.

171. English transcript, p. 6857.

172. Examples of the application of this philosophy may be found in Goering's explanation of his art looting: he had intended to put his pictures in a gallery which he intended to construct for the German people -- some day (Tr.p. 5934); his statement that he had always held that captured enemy airmen were to be treated as "comrades" (Tr.p. 5979); and his attempt to minimize his words advocating harsh treatment of the Jews, as the result of conversational excitement (Tr.p. 6192).

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Closing Address - Robert Jackson (English)

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